

## 16B Am. Jur. 2d Constitutional Law XI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Constitutional Law

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### XI. Obligation of Contracts

#### A. Contracts Clause in State and Federal Constitutions

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) [2660 to 2662, 2665, 2671, 2672, 2674, 2675, 2683, 2687, 2688, 2732, 2736, 2737](#)

### A.L.R. Library

A.L.R. Index, Impairment of Contracts

West's A.L.R. Digest, [Constitutional Law](#) [2660 to 2662, 2665, 2671, 2672, 2674, 2675, 2683, 2687, 2688, 2732, 2736, 2737](#)

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## 16B Am. Jur. 2d Constitutional Law § 747

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### Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

### XI. Obligation of Contracts

#### A. Contracts Clause in State and Federal Constitutions

## § 747. Prohibition against impairment of obligation of contracts, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2660

### A.L.R. Library

[Supreme Court Contracts Clause \(U.S. Const. Art. I, s10, cl. 1\) Jurisprudence, 40 A.L.R. Fed. 3d Art. 1](#)

The United States Constitution provides that "No State shall ... pass any ... Law impairing the Obligation of Contracts,"<sup>1</sup> thereby restricting the power of states to disrupt contractual arrangements,<sup>2</sup> and many state constitutions contain a similar guarantee.<sup>3</sup> The prohibition against the impairment of the obligation of contracts is referred to as the constitution's "Contracts Clause."<sup>4</sup> Generally, the federal and state constitutional guarantees against the impairment of contractual obligations are applied coextensively,<sup>5</sup> interpreted essentially identically,<sup>6</sup> and given the same effect.<sup>7</sup> They afford equivalent protections,<sup>8</sup> and courts apply the same analysis to alleged violations of a state contracts clause and the Federal Contracts Clause.<sup>9</sup>

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### Footnotes

<sup>1</sup> [U.S. Const. Art. I, § 10, cl. 1.](#)

- 2 Sveen v. Melin, 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018).
- 3 Cal. Const. art. I, § 9 (California); Fla. Const. Art. I, § 10 (Florida); Ill. Const. art. I, § 16 (Illinois); La.  
4 Const. Art. I, § 23 (Louisiana); Me. Const. Art. I, § 11 (Maine); Minn. Const. Art. I, § 11 (Minnesota); Mont.  
5 Const. Art. II, § 31 (Montana); Or. Const. Art. I, § 21 (Oregon); Pa. Const. Art. I, § 17 (Pennsylvania); R.I.  
6 Const. Art. I, § 12 (Rhode Island); S.C. Const. Art. I, § 4 (South Carolina).
- 7 Rossborough Mfg. Co. v. Trimble, 301 F.3d 482, 2002 FED App. 0290P (6th Cir. 2002); Lazar v. Kroncke,  
8 862 F.3d 1186 (9th Cir. 2017), cert. denied, 138 S. Ct. 2647, 201 L. Ed. 2d 1049 (2018); American Exp.  
9 Travel Related Services, Inc. v. Kentucky, 597 F. Supp. 2d 717 (E.D. Ky. 2009); Robson Ranch Quail Creek,  
LLC v. Pima County, 215 Ariz. 545, 161 P.3d 588 (Ct. App. Div. 2 2007); Clark v. City of Saint Paul, 934  
N.W.2d 334 (Minn. 2019).
- 5 Teamsters Local 97 v. State, 434 N.J. Super. 393, 84 A.3d 989 (App. Div. 2014).
- 6 Chandler v. Jorge A. Gutierrez, P.C., 906 S.W.2d 195 (Tex. App. Austin 1995), writ denied, (Mar. 21, 1996).
- 7 Department of Labor and Industries of State v. Lyons Enterprises, Inc., 186 Wash. App. 518, 347 P.3d 464  
8 (Div. 2 2015), aff'd, 185 Wash. 2d 721, 374 P.3d 1097 (2016), as amended without opinion, (July 13, 2016).
- 9 State Employees' Ass'n of New Hampshire v. State, 161 N.H. 730, 20 A.3d 961 (2011).
- MONY Life Ins. Co. v. Ericson, 533 F. Supp. 2d 921 (D. Minn. 2008); Hageland Aviation Services, Inc. v.  
Harms, 210 P.3d 444 (Alaska 2009).

## 16B Am. Jur. 2d Constitutional Law § 748

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### Constitutional Law

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### XI. Obligation of Contracts

#### A. Contracts Clause in State and Federal Constitutions

#### § 748. Purpose of Contracts Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2660

The purpose of a constitution's Contracts Clause is to protect bargains reached by parties by prohibiting states from enacting laws that interfere with preexisting contractual arrangements.<sup>1</sup> In other words, the purpose of the Contracts Clause is to prevent the government from changing the relative position of two parties to an existing contract after the parties have assigned their own contractual rights and duties.<sup>2</sup> The purpose of the Contracts Clause, however, is not simply to prevent harm to the parties engaged in the contractual relationship.<sup>3</sup> Its larger purpose is to encourage trade and credit by promoting confidence in the stability of contractual obligations, generally.<sup>4</sup> The Contracts Clause protects certainty in business dealings and encourages private agreements.<sup>5</sup>

#### Observation:

It is sometimes recognized that the primary focus of the Contracts Clause is on legislation designed to repudiate or adjust preexisting debtor-creditor relationships.<sup>6</sup>

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Footnotes

- 1      [Transport Workers Union of America, Local 290 By and Through Fabio v. Southeastern Pennsylvania Transp. Authority](#), 145 F.3d 619 (3d Cir. 1998) (purpose of the Contracts Clause is to protect the legitimate expectations that arise from contractual relationships from unreasonable legislative interference); [Health Care Ass'n Workers Comp. Fund v. Director of the Bureau of Worker's Comp., Department of Consumer and Industry Services](#), 265 Mich. App. 236, 694 N.W.2d 761 (2005).
- 2      [Perfect Puppy, Inc. v. City of East Providence](#), 98 F. Supp. 3d 408 (D.R.I. 2015), aff'd in part, appeal dismissed in part, 807 F.3d 415 (1st Cir. 2015).
- 3      [American Exp. Travel Related Services, Inc. v. Kentucky](#), 597 F. Supp. 2d 717 (E.D. Ky. 2009).
- 4      [U.S. Trust Co. of New York v. New Jersey](#), 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); [Pierce County v. State](#), 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 5      [American Exp. Travel Related Services, Inc. v. Kentucky](#), 597 F. Supp. 2d 717 (E.D. Ky. 2009).
- 6      [Keystone Bituminous Coal Ass'n v. DeBenedictis](#), 480 U.S. 470, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987); [In re Estate of Becker](#), 32 P.3d 557 (Colo. App. 2000), as modified on denial of reh'g, (Mar. 8, 2001) and decision aff'd, 54 P.3d 849 (Colo. 2002).

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## 16B Am. Jur. 2d Constitutional Law § 749

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### XI. Obligation of Contracts

#### A. Contracts Clause in State and Federal Constitutions

## § 749. Construction of Contracts Clause; reserved powers doctrine

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  [2661](#), [2662](#), [2674](#), [2675](#)

Although the Federal and State Constitutions' Contracts Clauses appear literally to proscribe "any" impairment of the obligation of contracts,<sup>1</sup> the prohibition is not an absolute one<sup>2</sup> and is not to be read with literal exactness like a mathematical formula.<sup>3</sup> Literalism in the construction of the Contracts Clause would make it destructive of the public interest by depriving the state of its prerogative of self-protection.<sup>4</sup>

The constitutional protection against the impairment of the obligation of contracts is no greater than other constitutional guarantees,<sup>5</sup> and it cannot be construed to prohibit the exercise by a state of its other constitutional powers.<sup>6</sup> The Contracts Clause must be considered in conjunction with the reserved power of the state to protect the vital interests of the community,<sup>7</sup> and its prohibition must be accommodated to the inherent police power of the state to safeguard the vital interests of its people.<sup>8</sup> The Contracts Clause does not bar the state's exercise of powers that are inherent in and essential to the effective operation of government,<sup>9</sup> such as the power of eminent domain,<sup>10</sup> or the state's exercise of its police powers to promote the general welfare<sup>11</sup> or the common weal, even though contracts previously entered into may be affected.<sup>12</sup> This is true even if the legislature had by statute given assurance that it would not exercise those powers.<sup>13</sup> The U.S. Supreme Court calls this the "reserved powers" doctrine,<sup>14</sup> and under this doctrine, the reservation of the essential attributes of sovereign power is read into contracts as a postulate of the legal order.<sup>15</sup> One whose rights are subject to state restriction cannot remove them from the power of the state by making a contract about them and thereby attempt to invoke the protection of the Contracts Clause.<sup>16</sup>

Footnotes

- 1 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018); Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007); Cranston Police Retirees Action Committee v. City of Cranston by and through Strom, 208 A.3d 557 (R.I. 2019), cert. denied, 140 S. Ct. 652, 205 L. Ed. 2d 386 (2019); Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014), opinion after certified question answered, 2014 WL 12734325 (D.S.C. 2014).
- 2 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018); Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007); Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); Aguirre v. State of Michigan, 315 Mich. App. 706, 891 N.W.2d 516 (2016); Kimberly-Clark Corp. & Subsidiaries v. Commissioner of Revenue, 880 N.W.2d 844 (Minn. 2016); Healthnow New York Inc. v. New York State Ins. Dept., 110 A.D.3d 1216, 973 N.Y.S.2d 387 (3d Dep't 2013); Cranston Police Retirees Action Committee v. City of Cranston by and through Strom, 208 A.3d 557 (R.I. 2019), cert. denied, 140 S. Ct. 652, 205 L. Ed. 2d 386 (2019); Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014), opinion after certified question answered, 2014 WL 12734325 (D.S.C. 2014).
- 3 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018); Hawkeye Commodity Promotions, Inc. v. Miller, 432 F. Supp. 2d 822 (N.D. Iowa 2006), judgment aff'd, 486 F.3d 430 (8th Cir. 2007); Cranston Police Retirees Action Committee v. City of Cranston by and through Strom, 208 A.3d 557 (R.I. 2019), cert. denied, 140 S. Ct. 652, 205 L. Ed. 2d 386 (2019); Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014), opinion after certified question answered, 2014 WL 12734325 (D.S.C. 2014).
- 4 South Union Tp. v. Com., 839 A.2d 1179 (Pa. Commw. Ct. 2003), aff'd, 578 Pa. 564, 854 A.2d 476 (2004).
- 5 Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954).
- 6 Harsha v. City of Detroit, 261 Mich. 586, 246 N.W. 849, 90 A.L.R. 853 (1933).
- 7 State v. Chamberlain, 280 Kan. 241, 120 P.3d 319 (2005); Health Care Ass'n Workers Comp. Fund v. Director of the Bureau of Worker's Comp., Department of Consumer and Industry Services, 265 Mich. App. 236, 694 N.W.2d 761 (2005).
- 8 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011); Aguirre v. State of Michigan, 315 Mich. App. 706, 891 N.W.2d 516 (2016); North Carolina Ass'n of Educators, Inc. v. State, 368 N.C. 777, 786 S.E.2d 255, 331 Ed. Law Rep. 485 (2016).
- 9 As to a state's police power, generally, see §§ 333 to 399.
- Westchester Creek Corp. v. New York City School Const. Authority, 286 A.D.2d 154, 730 N.Y.S.2d 95, 156 Ed. Law Rep. 1269 (1st Dep't 2001), order aff'd, 98 N.Y.2d 298, 746 N.Y.S.2d 684, 774 N.E.2d 749, 169 Ed. Law Rep. 364 (2002).
- 10 Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S. Ct. 2321, 81 L. Ed. 2d 186 (1984); U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Matsuda v. City and County of Honolulu, 512 F.3d 1148 (9th Cir. 2008).
- 11 Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).
- 12 United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of Virgin Islands, 65 V.I. 468, 842 F.3d 201 (3d Cir. 2016).
- 13 Lipscomb v. Columbus Mun. Separate School Dist., 269 F.3d 494, 158 Ed. Law Rep. 200 (5th Cir. 2001).
- 14 U.S. v. Winstar Corp., 518 U.S. 839, 116 S. Ct. 2432, 135 L. Ed. 2d 964 (1996).
- 15 City of El Paso v. Simmons, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965); People v. Gipson, 117 Cal. App. 4th 1065, 12 Cal. Rptr. 3d 478 (6th Dist. 2004).
- 16 South Union Tp. v. Com., 839 A.2d 1179 (Pa. Commw. Ct. 2003), aff'd, 578 Pa. 564, 854 A.2d 476 (2004).

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## 16B Am. Jur. 2d Constitutional Law § 750

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### Constitutional Law

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### XI. Obligation of Contracts

#### A. Contracts Clause in State and Federal Constitutions

## § 750. Tests for Contracts Clause violation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  2671, 2672, 2687, 2688, 2736, 2737

Not all laws affecting preexisting contracts violate the Contracts Clause, which prohibits state law impairing the obligation of contracts,<sup>1</sup> and courts vary in their descriptions of the test for determining whether there has been a violation of the Contracts Clause, but common lines of analysis appear. The threshold inquiry or issue by a court is an examination of whether the state law has operated as a substantial impairment of a contractual relationship.<sup>2</sup> Such threshold inquiry has three components: (1) whether there is a contractual relationship,<sup>3</sup> (2) whether a change in the law impairs that contractual relationship, and (3) whether the impairment is substantial.<sup>4</sup> If the threshold inquiry is met, and substantial impairment exists, the inquiry turns to the means and ends of the legislation,<sup>5</sup> with the court asking whether the state law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose.<sup>6</sup> Specifically, the court must determine whether the law at issue has a significant and legitimate public purpose, and if so, the court must ascertain whether the adjustment of rights and responsibilities of the contracting parties is based on reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption.<sup>7</sup> As more simply expressed, the court determines whether the impairment is reasonable and necessary to serve an important public purpose.<sup>8</sup> If a contractual impairment is both reasonable and necessary for an important public purpose, then the law does not violate the Contracts Clause.<sup>9</sup>

Some courts frame the test for determining whether there has been a violation of the Contracts Clause, in terms of whether a substantial impairment of the contractual relationship is permissible as a legitimate exercise of the state's sovereign powers.<sup>10</sup>

**Observation:**

The scrutiny to which a court subjects the challenged law is proportional to the degree of impairment.<sup>11</sup>

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Footnotes

- 1 Sveen v. Melin, 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018).
- 2 Sveen v. Melin, 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018); General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992); San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009); S&M Brands, Inc. v. Georgia ex rel. Carr, 925 F.3d 1198 (11th Cir. 2019); Williams v. City of Kuttawa, 466 S.W.3d 505 (Ky. Ct. App. 2015); Fedway Marketplace West, LLC v. State, 183 Wash. App. 860, 336 P.3d 615 (Div. 2 2014).
- 3 § 758.
- 4 General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992); Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); LL Liquor, Inc. v. Montana, 912 F.3d 533 (9th Cir. 2018); Boyz Sanitation Service, Inc. v. City of Rawlins, Wyoming, 889 F.3d 1189 (10th Cir. 2018); Deere & Company v. State, 168 N.H. 460, 130 A.3d 1197 (2015); American Economy Ins. Co. v. State, 30 N.Y.3d 136, 65 N.Y.S.3d 94, 87 N.E.3d 126 (2017), cert. denied, 138 S. Ct. 2601, 201 L. Ed. 2d 1003 (2018).
- 5 As to impairment of the contractual obligation, see §§ 769 to 776.
- 6 Sveen v. Melin, 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018).
- 7 Sveen v. Melin, 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018). Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987); Kaminski v. Coulter, 865 F.3d 339 (6th Cir. 2017); Xcaliber International, Ltd. LLC v. Georgia ex rel. Carr, 253 F. Supp. 3d 1220 (N.D. Ga. 2017); United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008); Clark v. City of Saint Paul, 934 N.W.2d 334 (Minn. 2019); Hand v. Philadelphia Ins. Co., 408 N.J. Super. 124, 973 A.2d 973 (App. Div. 2009); EmergencyCare, Inc. v. Millcreek Tp., 68 A.3d 1 (Pa. Commw. Ct. 2013).
- 8 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of Virgin Islands, 65 V.I. 468, 842 F.3d 201 (3d Cir. 2016); Puckett v. Lexington-Fayette Urban County Government, 833 F.3d 590 (6th Cir. 2016); Hageland Aviation Services, Inc. v. Harms, 210 P.3d 444 (Alaska 2009); Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014); Berg v. Christie, 225 N.J. 245, 137 A.3d 1143 (2016).
- 9 Elliott v. Board of School Trustees of Madison Consolidated Schools, 876 F.3d 926, 349 Ed. Law Rep. 913 (7th Cir. 2017), cert. denied, 138 S. Ct. 2624, 201 L. Ed. 2d 1028 (2018); Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014); School District No. 1 in City and County of Denver v. Masters, 2018 CO 18, 413 P.3d 723, 352 Ed. Law Rep. 1192 (Colo. 2018); Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State, 209 So. 3d 1181 (Fla. 2017).

- 10 Catawba Indian Tribe of South Carolina v. City of Rock Hill, SC, 501 F.3d 368 (4th Cir. 2007); Big John's  
Billiards, Inc. v. State, 288 Neb. 938, 852 N.W.2d 727 (2014).
- 11 Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978); Lipscomb  
v. Columbus Mun. Separate School Dist., 269 F.3d 494, 158 Ed. Law Rep. 200 (5th Cir. 2001).

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## 16B Am. Jur. 2d Constitutional Law § 751

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### XI. Obligation of Contracts

#### A. Contracts Clause in State and Federal Constitutions

#### § 751. Governing law as to analysis of Contracts Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2665, 2683, 2732

Whether a law violates the Contracts Clause of the Federal Constitution, prohibiting the impairment of the obligation of contracts, is a federal question.<sup>1</sup> The question of whether a contract was made<sup>2</sup> also is a federal question for purposes of Contracts Clause analysis,<sup>3</sup> although a court may rely on general and local law when determining the answer.<sup>4</sup> Accordingly, whether a state statute creates a contractual obligation for purposes of federal Contracts Clause analysis is a federal question.<sup>5</sup>

#### Observation:

Although federal courts look to state law to determine the existence of a contract, federal rather than state law controls as to whether state or local statutes or ordinances create contractual rights protected by the Contracts Clause; nevertheless, federal courts do accord respectful consideration and great weight to the views of the state's highest court.<sup>6</sup>

Footnotes

- 1 Howell v. Anne Arundel County, 14 F. Supp. 2d 752 (D. Md. 1998); Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).
- 2 § 758.
- 3 General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992); National Educ. Association-Rhode Island ex rel. Scigulinsky v. Retirement Bd. of Rhode Island Employees' Retirement System, 172 F.3d 22, 133 Ed. Law Rep. 738 (1st Cir. 1999); Hawkeye Commodity Promotions, Inc. v. Vilsack, 486 F.3d 430 (8th Cir. 2007); HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010).  
4 HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010).
- 5 Honeywell, Inc. v. Minnesota Life and Health Ins. Guar. Ass'n, 110 F.3d 547 (8th Cir. 1997); San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009).
- 6 San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009).

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### Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2661, 2663, 2664, 2666, 2667, 2673, 2684

### A.L.R. Library

A.L.R. Index, Impairment of Contracts

West's A.L.R. Digest, [Constitutional Law](#)  2661, 2663, 2664, 2666, 2667, 2673, 2684

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## 16B Am. Jur. 2d Constitutional Law § 752

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### Constitutional Law

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### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

## § 752. Application of Contracts Clause to states and state legislation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2663, 2666, 2684

The Contracts Clause of the Federal Constitution, proscribing the impairment of the obligation of contracts is, by its very language, a limitation on the powers of the states only.<sup>1</sup> and applies only to the states.<sup>2</sup> It has been held to extend to the Virgin Islands,<sup>3</sup> to the "local" government of the District of Columbia,<sup>4</sup> and, by inference, to Puerto Rico.<sup>5</sup>

State and federal constitutional prohibitions against the impairment of contracts prohibit any form of state legislative action impairing existing obligations.<sup>6</sup> This includes state statutes and constitutions<sup>7</sup> and direct action by the people, such as through referenda<sup>8</sup> or an initiative process.<sup>9</sup> Such constitutional prohibitions against the impairment of the obligation of contracts apply only to measures that are state laws.<sup>10</sup>

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### Footnotes

- 1 [Thorpe v. Housing Authority of City of Durham](#), 393 U.S. 268, 89 S. Ct. 518, 21 L. Ed. 2d 474 (1969).
- 2 [Nix v. NASA Federal Credit Union](#), 200 F. Supp. 3d 578 (D. Md. 2016); [In re Middleton](#), 544 B.R. 449 (Bankr. S.D. Ala. 2016).
- 3 [Thornberg v. Jorgensen](#), 60 F.2d 471 (C.C.A. 3d Cir. 1932); [General Offshore Corp. v. Farrelly](#), 25 V.I. 226, 743 F. Supp. 1177 (D.V.I. 1990).
- 4 [Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Educ. of the District of Columbia](#), 109 F.3d 774, 117 Ed. Law Rep. 42 (D.C. Cir. 1997).

- 5                   Mercado Boneta v. Fernandez, 950 F. Supp. 432 (D.P.R. 1996).  
6                   Bates v. City of Richland, 112 Wash. App. 919, 51 P.3d 816 (Div. 3 2002).  
7                   Price v. Pennsylvania Prop. & Cas. Ins. Co. Ass'n, 158 F. Supp. 2d 547 (E.D. Pa. 2001).  
8                   Low v. City of Monticello, 2002 UT 90, 54 P.3d 1153 (Utah 2002) (overruled on other grounds by, [Carter](#)  
v. Lehi City, 2012 UT 2, 269 P.3d 141 (Utah 2012)).  
9                   Fedway Marketplace West, LLC v. State, 183 Wash. App. 860, 336 P.3d 615 (Div. 2 2014).  
10                  In re Financial Oversight and Management Board for Puerto Rico, 297 F. Supp. 3d 269 (D.P.R. 2018),  
judgment aff'd, [927 F.3d 597](#) (1st Cir. 2019), cert. denied, 140 S. Ct. 856 (2020).

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## 16B Am. Jur. 2d Constitutional Law § 753

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### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

## § 753. Application of Contracts Clause to state administrative action; municipal ordinances

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2663, 2666, 2684

The Contracts Clauses of the Federal and State Constitutions, prohibiting the impairment of the obligation of contracts, are aimed at the legislative power of the state<sup>1</sup> and are directed against legislative action,<sup>2</sup> and not at the general acts of administrative or executive boards or officers.<sup>3</sup> The Contracts Clauses, in other words, apply to state legislation and not to the general actions of other entities, even if such entities happen to be an arm of the state.<sup>4</sup> Nevertheless, to come within the constitutional prohibition against the impairment of contracts, the "law" of a "state" does not have to be either in the form of a statute enacted by the legislature in the ordinary course of legislation or in the form of a constitution established by the people of the state as their fundamental law.<sup>5</sup> Any enactment, from whatever source originating, to which a state gives the force of law is a law of the state, within the meaning of the Contracts Clause.<sup>6</sup> The Contracts Clause thus reaches every form in which the state's legislative power is exerted, including an order of some other instrumentality of the state exercising delegated legislative authority.<sup>7</sup>

Bylaws<sup>8</sup> and ordinances of municipal corporations or political subdivisions are subject to the Contracts Clause<sup>9</sup> when such are given the force of law by the state.<sup>10</sup> Similarly, the Contracts Clause applies to regulations promulgated by a state administrative agency pursuant to a specific statute.<sup>11</sup> To be subject to the Contracts Clause as a law, municipal and administrative action must involve either lawmaking or rulemaking.<sup>12</sup> The Contracts Clause is not implicated in the acts of administrative or executive boards or officers where the officers do not change any laws.<sup>13</sup> Purely ministerial tasks carried out by executive branch members, such as the grant of a license, are not legislative action subject to the Contracts Clause.<sup>14</sup>

Footnotes

- 1       Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); Wheelabrator Lisbon Inc. v. Connecticut Dept. of Public Utility Control, 526 F. Supp. 2d 295 (D. Conn. 2006), judgment aff'd, 531 F.3d 183 (2d Cir. 2008); AGI-Bluff Manor, Inc. v. Reagen, 713 F. Supp. 1535 (W.D. Mo. 1989); Avery v. Paulding County Airport Authority, 343 Ga. App. 832, 808 S.E.2d 15 (2017), cert. denied, (June 4, 2018).
- 2       Avery v. Paulding County Airport Authority, 343 Ga. App. 832, 808 S.E.2d 15 (2017), cert. denied, (June 4, 2018).
- 3       Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); Wheelabrator Lisbon Inc. v. Connecticut Dept. of Public Utility Control, 526 F. Supp. 2d 295 (D. Conn. 2006), judgment aff'd, 531 F.3d 183 (2d Cir. 2008); AGI-Bluff Manor, Inc. v. Reagen, 713 F. Supp. 1535 (W.D. Mo. 1989); Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).
- 4       In re Jet 1 Center, Inc., 322 B.R. 182 (Bankr. M.D. Fla. 2005).
- 5       New Orleans Waterworks Co. v. Louisiana Sugar-Refining Co., 125 U.S. 18, 8 S. Ct. 741, 31 L. Ed. 607 (1888).
- 6       Williams v. Bruffy, 96 U.S. 176, 24 L. Ed. 716, 1877 WL 18530 (1877).
- 7       City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014).
- 8       Montauk Bus Co., Inc. v. Utica City School Dist., 30 F. Supp. 2d 313, 131 Ed. Law Rep. 974 (N.D. N.Y. 1998); Price v. Pennsylvania Prop. & Cas. Ins. Co. Ass'n, 158 F. Supp. 2d 547 (E.D. Pa. 2001).
- 9       Alarm Detection Systems, Incorporated v. Village of Schaumburg, 930 F.3d 812 (7th Cir. 2019); Montauk Bus Co., Inc. v. Utica City School Dist., 30 F. Supp. 2d 313, 131 Ed. Law Rep. 974 (N.D. N.Y. 1998); Price v. Pennsylvania Prop. & Cas. Ins. Co. Ass'n, 158 F. Supp. 2d 547 (E.D. Pa. 2001); Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014); Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).
- 10      Montauk Bus Co., Inc. v. Utica City School Dist., 30 F. Supp. 2d 313, 131 Ed. Law Rep. 974 (N.D. N.Y. 1998).
- 11      In re Jet 1 Center, Inc., 322 B.R. 182 (Bankr. M.D. Fla. 2005); Golden Rule Ins. Co. v. Insurance Dept., 163 Pa. Commw. 509, 641 A.2d 1255 (1994).
- 12      Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson, 85 F. Supp. 2d 174 (E.D. N.Y. 2000).
- 13      Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014).
- 14      Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson, 85 F. Supp. 2d 174 (E.D. N.Y. 2000).

## 16B Am. Jur. 2d Constitutional Law § 754

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### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

## § 754. Application of Contracts Clause to state judicial decisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2673

The Contracts Clause of the Federal Constitution is directed only against impairment by legislation and not against the judgments or decisions of courts,<sup>1</sup> and is not violated by a judicial determination.<sup>2</sup> Accordingly, although a contract may be valid by virtue of the judicial construction of a statute or otherwise at the time it is entered into, it is not unconstitutionally impaired by a change in those judicial decisions rendering it invalid.<sup>3</sup> There is no vested right in the decisions of a court, and a change in the decisions of a state court does not constitute the passing of a law, although the effect of such change is to impair the validity of a contract made in reliance on prior decisions.<sup>4</sup>

Some courts, in interpreting the Contracts Clause of their state constitutions, follow the federal rule and hold that decisions of a court are not laws under the Contracts Clause,<sup>5</sup> and that such Contracts Clause is not violated by a judicial determination.<sup>6</sup> Other courts, however, interpret the Contracts Clause of their state constitutions to apply to judicial decisions.<sup>7</sup> In these states, if a contract when made was valid under the laws of the state as then expounded and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent decision of its courts altering the construction of the law.<sup>8</sup> In some states, the state constitutional prohibition against impairment of contract resulting from changed judicial interpretation applies only to cases of statutory interpretation where the statute involved had received uniform judicial construction in numerous cases over a long period of years.<sup>9</sup>

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Footnotes

- 1 Tidal Oil Co. v. Flanagan, 263 U.S. 444, 44 S. Ct. 197, 68 L. Ed. 382 (1924); City of Pontiac Retired  
Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); Canal Ins. Co. v. Hopkins, 238 S.W.3d 549  
(Tex. App. Tyler 2007).
- 2 International Ass'n of Firefighters Local 1400, Chester City Firefighters v. City of Chester, 991 A.2d 1001  
(Pa. Commw. Ct. 2010).
- 3 Barrows v. Jackson, 346 U.S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953).
- 4 Fleming v. Fleming, 264 U.S. 29, 44 S. Ct. 246, 68 L. Ed. 547 (1924); Morton v. Dardanelle Special School  
Dist. No. 15 of Yell County, Ark., 121 F.2d 423 (C.C.A. 8th Cir. 1941); State ex rel. Taylor v. Carolina  
Racing Ass'n, 241 N.C. 80, 84 S.E.2d 390 (1954).
- 5 Elness Swenson Graham Architects, Inc. v. RLJ II-C Austin Air, LP, 520 S.W.3d 145 (Tex. App. Austin  
2017), review denied, (June 1, 2018).
- 6 International Ass'n of Firefighters Local 1400, Chester City Firefighters v. City of Chester, 991 A.2d 1001  
(Pa. Commw. Ct. 2010).
- 7 Bradley v. Superior Court In and For City and County of San Francisco, 48 Cal. 2d 509, 310 P.2d 634 (1957).
- 8 Whitaker v. T & M Foods, Ltd., 7 So. 3d 893 (Miss. 2009).
- 9 Rouse v. Paidrick, 221 Ind. 517, 49 N.E.2d 528 (1943).

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### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

## § 755. Application of Contracts Clause to federal legislation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2664

The Contracts Clause of the Federal Constitution is not a limitation on the powers of Congress<sup>1</sup> or the federal government.<sup>2</sup> Accordingly, Congress is not prohibited from passing laws impairing the obligation of contracts,<sup>3</sup> and the terms of an otherwise enforceable contract in some cases may be abrogated by supervening federal statute or regulation.<sup>4</sup> Congress can act free of the constraints of the Contracts Clause even when enacting legislation for the District of Columbia.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [In re Varanasi](#), 394 B.R. 430 (Bankr. S.D. Ohio 2008).
- <sup>2</sup> [Pension Ben. Guar. Corp. v. R.A. Gray & Co.](#), 467 U.S. 717, 104 S. Ct. 2709, 81 L. Ed. 2d 601 (1984); [Nix v. NASA Federal Credit Union](#), 200 F. Supp. 3d 578 (D. Md. 2016); [McNeil v. U.S.](#), 78 Fed. Cl. 211 (2007), judgment aff'd, 293 Fed. Appx. 758 (Fed. Cir. 2008).
- <sup>3</sup> [In re Financial Oversight and Management Board for Puerto Rico](#), 361 F. Supp. 3d 203 (D.P.R. 2019), judgment entered, 366 F. Supp. 3d 256 (D.P.R. 2019); [In re City of Stockton, Cal.](#), 478 B.R. 8 (Bankr. E.D. Cal. 2012).
- <sup>4</sup> [Nicolas v. Deposit Guar. Nat. Bank](#), 182 F.R.D. 226 (S.D. Miss. 1998).
- <sup>5</sup> [American Federation of Government Employees v. District of Columbia Financial Responsibility and Management Assistance Authority](#), 133 F. Supp. 2d 75 (D.D.C. 2001).

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## 16B Am. Jur. 2d Constitutional Law § 756

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### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

### § 756. Application of Contracts Clause to laws in effect when contract was made

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2661, 2663

The Contracts Clauses of the Federal and State Constitutions do not apply to a law enacted prior to the making of a contract the obligation of which is claimed to be impaired,<sup>1</sup> but only to a statute of a state enacted after the making of the contract.<sup>2</sup> It is presumed that contracts are made in contemplation of the existing law.<sup>3</sup> Accordingly, when a statute was in force and effect at the time a contract was made, there is no impairment in violation of the Contracts Clause, because existing statutes are read into future contracts and enter into the contract terms by implication.<sup>4</sup>

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#### Footnotes

- 1 [Veix v. Sixth Ward Building & Loan Ass'n of Newark](#), 310 U.S. 32, 60 S. Ct. 792, 84 L. Ed. 1061 (1940); [McGuire v. Ameritech Services, Inc.](#), 253 F. Supp. 2d 988 (S.D. Ohio 2003); [Cenvill Investors, Inc. v. Condominium Owners Organization of Century Village East, Inc.](#), 556 So. 2d 1197 (Fla. 4th DCA 1990).
- 2 [Munday v. Wisconsin Trust Co.](#), 252 U.S. 499, 40 S. Ct. 365, 64 L. Ed. 684 (1920).
- 3 [Abilene Nat. Bank v. Dolley](#), 228 U.S. 1, 33 S. Ct. 409, 57 L. Ed. 707 (1913); [May v. Mulligan](#), 36 F. Supp. 596 (W.D. Mich. 1939), judgment aff'd, 117 F.2d 259 (C.C.A. 6th Cir. 1940); [Harper v. State Employees' Retirement System](#), 154 Pa. Commw. 573, 624 A.2d 279 (1993), order aff'd, 538 Pa. 520, 649 A.2d 643 (1994).
- 4 [Gretsch v. Vantium Capital, Inc.](#), 846 N.W.2d 424 (Minn. 2014).

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## 16B Am. Jur. 2d Constitutional Law § 757

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### XI. Obligation of Contracts

#### B. Governmental Entities and Laws to Which Contracts Clause Applies

### § 757. Application of Contracts Clause to retrospective or prospective laws enacted after contract was made

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2667

The Contracts Clause of the Federal Constitution,<sup>1</sup> as well as that of some state constitutions,<sup>2</sup> does not prohibit the states from repealing or amending statutes generally or from enacting legislation with retroactive effects. The Contracts Clause, in general, however, prohibits the legislature from enacting laws that retroactively impair contract rights,<sup>3</sup> and prevents the retroactive impairment of contracts.<sup>4</sup> A proper retroactive application of a statute requires a determination that the legislature clearly intended the statute to apply retroactively and that retroactive application does not impair vested contract rights in violation of the Contracts Clause.<sup>5</sup> Accordingly, a law may not be applied retroactively if it would impair contractual obligations<sup>6</sup> or disturb vested rights.<sup>7</sup> Even if a statute is remedial or procedural it cannot be applied retroactively if retroactive application would impair a contractual obligation<sup>8</sup> or vested rights.<sup>9</sup> Furthermore, a statute cannot be applied retroactively in violation of the Contracts Clause even if the act giving rise to the contractual obligation occurs after the effective date of the statute.<sup>10</sup>

If a statute's retroactivity is not made express, a presumption against retroactivity applies if it affects contractual rights.<sup>11</sup>

The Contracts Clause does not apply to statutes with prospective effect.<sup>12</sup> Thus, when a statute is applied prospectively to contracts formed subsequent to the adoption of the statute, the prohibition of the impairment of the obligation of contracts is not violated.<sup>13</sup>

**Observation:**

Some state constitutions, unlike the Federal Constitution, include an express prohibition against retrospectively operating laws, whether in addition to a prohibition on laws impairing contractual obligations<sup>14</sup> or in lieu thereof.<sup>15</sup>

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Footnotes

- 1 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Eagle SPE NV I, Inc. v. Kiley Ranch Communities, 5 F. Supp. 3d 1238 (D. Nev. 2014); Mainstreet Property Group, LLC v. Pontones, 97 N.E.3d 238 (Ind. Ct. App. 2018), transfer denied, 102 N.E.3d 890 (Ind. 2018); North Carolina Indian Cultural Center, Inc. v. Sanders, 830 S.E.2d 675 (N.C. Ct. App. 2019).
- 2 In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).
- 3 Commonwealth v. Ritz, 2016 PA Super 296, 153 A.3d 336 (2016).
- 4 Gretsch v. Vantium Capital, Inc., 846 N.W.2d 424 (Minn. 2014).
- 5 John Deere Const. and Forestry Co. v. Reliable Tractor, Inc., 406 Md. 139, 957 A.2d 595 (2008).
- 6 Jupiter Ocean and Racquet Club Condominium Ass'n, Inc. v. Courtside Properties of Palm Beach, LLC, 17 So. 3d 854 (Fla. 4th DCA 2009); Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); Ebinger v. Venus Const. Corp., 65 So. 3d 1279 (La. 2011).
- 7 Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); Ebinger v. Venus Const. Corp., 65 So. 3d 1279 (La. 2011).
- 8 Abadeer v. Tyson Foods, Inc., 975 F. Supp. 2d 890 (M.D. Tenn. 2013); In re D.A.H., 142 S.W.3d 267 (Tenn. 2004); Bill's Distributing, Ltd. v. Cormican, 2002 WI App 156, 256 Wis. 2d 142, 647 N.W.2d 908 (Ct. App. 2002).
- 9 Abadeer v. Tyson Foods, Inc., 975 F. Supp. 2d 890 (M.D. Tenn. 2013); Rock Tenn Co. v. Labor and Industry Review Com'n, 2011 WI App 93, 334 Wis. 2d 750, 799 N.W.2d 904 (Ct. App. 2011).
- 10 Clear Channel Broadcasting, Inc. v. Brown, 901 So. 2d 553 (La. Ct. App. 4th Cir. 2005).
- 11 Islander East Pipeline Co., LLC v. Connecticut Dept. of Environmental Protection, 482 F.3d 79 (2d Cir. 2006).
- 12 Local Division 589, Amalgamated Transit Union, AFL-CIO, CLC v. Com. of Mass., 666 F.2d 618 (1st Cir. 1981); Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100, 109 Ed. Law Rep. 148 (N.D. Ill. 1996).
- 13 Southern States Chemical, Inc. v. Tampa Tank & Welding, Inc., 836 S.E.2d 617 (Ga. Ct. App. 2019).
- 14 Colo. Const. Art. II, § 11 (Colorado).
- 15 N.H. Const. pt. 1, art. 23 (New Hampshire).

## 16B Am. Jur. 2d Constitutional Law XI C Refs.

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  2660, 2668 to 2670, 2680, 2681, 2685, 2686, 2689 to 2692, 2695 to 2699, 2706 to 2708, 2710 to 2714, 2726, 2734, 2735, 2740

### A.L.R. Library

A.L.R. Index, Impairment of Contracts

West's A.L.R. Digest, Constitutional Law  2660, 2668 to 2670, 2680, 2681, 2685, 2686, 2689 to 2692, 2695 to 2699, 2706 to 2708, 2710 to 2714, 2726, 2734, 2735, 2740

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## 16B Am. Jur. 2d Constitutional Law § 758

American Jurisprudence, Second Edition | May 2021 Update

### Constitutional Law

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### a. In General

### § 758. Existence of contract or contractual relationship

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2669, 2685, 2734

To determine whether there has been a violation of the Contracts Clause, prohibiting the impairment of the obligation of contracts, a court first must ascertain whether a contract exists<sup>1</sup> or whether a contractual relationship exists involving the person asserting the impairment.<sup>2</sup> In considering whether a contractual relationship exists, the inquiry goes not just to whether there is any contractual relationship between the parties, but to whether there is a contractual agreement regarding the specific terms allegedly at issue.<sup>3</sup>

The term "contract," for purposes of the Contracts Clause, is used in its ordinary<sup>4</sup> or usual sense, signifying an agreement of two or more minds, upon sufficient consideration, to do or not to do certain acts.<sup>5</sup> No single form of wording is essential.<sup>6</sup> The Contracts Clause applies to any kind of contract,<sup>7</sup> and takes under its protection all valid contracts of every description,<sup>8</sup> whether executed or executory,<sup>9</sup> written or verbal,<sup>10</sup> express or implied.<sup>11</sup> The prohibition against the impairment of the obligation of contracts, however, has been held to embrace only those contracts which respect property or some other object of value; that is, contracts that confer rights that may be asserted in courts of justice.<sup>12</sup> Protection under the Contracts Clause does not extend to contracts that relate to rights that are not rights of property but instead are governmental or political rights and privileges.<sup>13</sup>

**Observation:**

The question whether there is a contractual relationship for purposes of the Contracts Clause is distinct from whether there is a contract under state law.<sup>14</sup>

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Footnotes

- 1 [Hebert v. City of Woonsocket by and through Baldelli-Hunt, 213 A.3d 1065 \(R.I. 2019\)](#), as corrected without opinion, (Sept. 6, 2019).
- 2 [Frazier v. City of Chattanooga, Tennessee, 841 F.3d 433 \(6th Cir. 2016\); American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 \(8th Cir. 2008\); Polo Golf and Country Club Homeowners Association, Inc. v. Cunard, 306 Ga. 788, 833 S.E.2d 505 \(2019\); Burgos v. State, 222 N.J. 175, 118 A.3d 270 \(2015\); Strunk v. Public Employees Retirement Bd., 338 Or. 145, 108 P.3d 1058 \(2005\).](#)
- 3 [General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 \(1992\); RUI One Corp. v. City of Berkeley, 371 F.3d 1137 \(9th Cir. 2004\); Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 81 F. Supp. 3d 993 \(D. Haw. 2014\); CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 \(2013\).](#)
- 4 [Crane v. Hahlo, 258 U.S. 142, 42 S. Ct. 214, 66 L. Ed. 514 \(1922\).](#)
- 5 [In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 \(2014\).](#)
- 6 [Rhode Island Laborers' Dist. Council v. State of R.I., 145 F.3d 42 \(1st Cir. 1998\).](#)
- 7 [Sveen v. Melin, 138 S. Ct. 1815, 201 L. Ed. 2d 180 \(2018\); 21st Century Oncology, Inc. v. Moody, 402 F. Supp. 3d 1351 \(N.D. Fla. 2019\).](#)
- 8 [Long Island Water-Supply Co. v. City of Brooklyn, 166 U.S. 685, 17 S. Ct. 718, 41 L. Ed. 1165 \(1897\); Filipkowski v. Springfield Fire & Marine Ins. Co., 206 Wis. 39, 238 N.W. 828, 78 A.L.R. 613 \(1931\). As to contracts to which the state is a party, see § 762.](#)
- 9 [Farrington v. State of Tennessee, 95 U.S. 679, 24 L. Ed. 558, 1877 WL 18633 \(1877\); J. B. Preston Co. v. Funkhouser, 261 N.Y. 140, 184 N.E. 737, 87 A.L.R. 459 \(1933\), judgment aff'd, 290 U.S. 163, 54 S. Ct. 134, 78 L. Ed. 243 \(1933\).](#)
- 10 [Heyn v. Kahn, 19 Ohio Op. 29, 32 Ohio L. Abs. 522, 3 Ohio Supp. 367 \(C.P. 1940\).](#)
- 11 [Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 \(1945\); Crane v. Hahlo, 258 U.S. 142, 42 S. Ct. 214, 66 L. Ed. 514 \(1922\); Rogers v. Bandy, 132 Fla. 790, 182 So. 281 \(1938\).](#)
- 12 [Love v. McDonald, 201 Ark. 882, 148 S.W.2d 170 \(1941\); Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775, 153 A.L.R. 1199 \(1944\).](#)
- 13 [Douglas v. Commonwealth of Kentucky, 168 U.S. 488, 18 S. Ct. 199, 42 L. Ed. 553 \(1897\); Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775, 153 A.L.R. 1199 \(1944\).](#)
- 14 [LL Liquor, Inc. v. Montana, 912 F.3d 533 \(9th Cir. 2018\).](#)

## 16B Am. Jur. 2d Constitutional Law § 759

American Jurisprudence, Second Edition | May 2021 Update

### Constitutional Law

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### a. In General

### § 759. Requirement that contract rights at issue be vested

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2669, 2685, 2734

Only those contracts in which the parties have a vested beneficial interest are afforded protection by the Contracts Clause, prohibiting the impairment of the obligation of contracts.<sup>1</sup> Contingent, speculative, or expectation interests are not within the protection of the Contracts Clause.<sup>2</sup>

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#### Footnotes

<sup>1</sup> [Buchholz v. Storsve](#), 2007 SD 101, 740 N.W.2d 107 (S.D. 2007).

<sup>2</sup> [Ochiltree v. Iowa Railroad Contracting Co.](#), 88 U.S. 249, 22 L. Ed. 546, 1874 WL 17439 (1874); [Buchholz v. Storsve](#), 2007 SD 101, 740 N.W.2d 107 (S.D. 2007).

## 16B Am. Jur. 2d Constitutional Law § 760

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### Constitutional Law

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### a. In General

## § 760. Invalid or illegal contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2669, 2685, 2734

The Contracts Clause, prohibiting the impairment of the obligation of contracts, does not protect expectations that are based on contracts that are invalid, illegal, unenforceable, or that arise without the giving of consideration.<sup>1</sup> However, state or municipal contracts held invalid by a court may be validated by the subsequent passage of legislation indicating a clear intent on the legislature's part to render such contracts valid.<sup>2</sup>

A contract that rests on an unconstitutional statute is itself void and creates no obligation to be impaired by subsequent legislation.<sup>3</sup>

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### Footnotes

<sup>1</sup> [San Diego City Firefighters, Local 145 v. Bd. of Admin. of San Diego City Emples. Ret. Sys.](#), 206 Cal. App. 4th 594, 141 Cal. Rptr. 3d 860 (4th Dist. 2012); [Mibbs, Inc. v. South Carolina Dept. of Revenue](#), 337 S.C. 601, 524 S.E.2d 626 (1999).

<sup>2</sup> [Massachusetts Mun. Wholesale Elec. Co. v. State](#), 161 Vt. 346, 639 A.2d 995 (1994).

<sup>3</sup> [Flournoy v. First Nat. Bank of Shreveport](#), 197 La. 1067, 3 So. 2d 244 (1941).

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## 16B Am. Jur. 2d Constitutional Law § 761

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### a. In General

### § 761. Future contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Constitutional Law 2670, 2686, 2735

Although a statute tending to impair the obligation of a contract is inoperative as to contracts existing at the time of its passage, it may nevertheless be valid and operative as to future contracts<sup>1</sup> or as to rights under an existing contract where such rights are not yet vested.<sup>2</sup> In other words, the Contracts Clause is only implicated when an existing contract is substantially impaired; it has no application to future contracts.<sup>3</sup> A statute cannot be said to impair a contract that did not exist at the time of its enactment.<sup>4</sup>

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#### Footnotes

- 1 Kinney v. Connecticut Judicial Dept., 974 F.2d 313 (2d Cir. 1992); Roberts v. M & R Properties, Inc., 612 So. 2d 432 (Ala. 1992).
- 2 McGrath v. Rhode Island Retirement Bd., 88 F.3d 12 (1st Cir. 1996).
- 3 Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826, 235 Ill. Dec. 183, 704 N.E.2d 756 (1st Dist. 1998).
- 4 Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982); Empire Gen Holdings, Inc. v. Governor of State, 40 Misc. 3d 984, 967 N.Y.S.2d 919 (Sup 2013).

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## 16B Am. Jur. 2d Constitutional Law § 762

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### Constitutional Law

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### b. Contracts Involving Government Entities

## § 762. Contracts involving government entities, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2680, 2689 to 2692, 2695 to 2699, 2726

The Contracts Clause, prohibiting legislation impairing the obligation of contracts, applies to contracts entered into by a state,<sup>1</sup> thereby restricting states from impairing their own contracts,<sup>2</sup> and limiting the power of the states to modify their own contracts with other parties.<sup>3</sup> The Contracts Clause thus protects against a change in the state's obligations that operates as a substantial impairment of a contractual relationship.<sup>4</sup> The Contracts Clause also applies to contracts entered into by municipalities,<sup>5</sup> counties,<sup>6</sup> and other governmental entities.<sup>7</sup>

When a state is acting not in its capacity as a sovereign but in its proprietary capacity as a party to a contract, the state is bound by the same rules as those which it applies to its citizens.<sup>8</sup> The courts will closely scrutinize state statutes affecting public contracts to make certain that the state is not attempting to escape from its own financial obligations in violation of the Contracts Clause.<sup>9</sup> However, a contract entered into between the state and an individual "subject to law" permits the state to rescind such contract without impairing the obligation of it.<sup>10</sup>

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Footnotes

- 1 Wolff v. City of New Orleans, 103 U.S. 358, 26 L. Ed. 395, 1880 WL 18789 (1880); Buffalo Teachers  
Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); Pure Wafer Incorporated v. Prescott,  
City of, 845 F.3d 943 (9th Cir. 2017).
- 2 Cal Fire Local 2881 v. California Public Employees' Retirement System, 6 Cal. 5th 965, 244 Cal. Rptr. 3d  
149, 435 P.3d 433 (Cal. 2019).
- 3 Boyz Sanitation Service, Inc. v. City of Rawlins, Wyoming, 889 F.3d 1189 (10th Cir. 2018); San Bernardino  
Public Employees Assn. v. City of Fontana, 67 Cal. App. 4th 1215, 79 Cal. Rptr. 2d 634 (4th Dist. 1998);  
Mainstreet Property Group, LLC v. Pontones, 97 N.E.3d 238 (Ind. Ct. App. 2018), transfer denied, 102  
N.E.3d 890 (Ind. 2018); North Carolina Indian Cultural Center, Inc. v. Sanders, 830 S.E.2d 675 (N.C. Ct.  
App. 2019).
- 4 Borough of Seaside Park v. Commissioner of New Jersey Dept. of Educ., 432 N.J. Super. 167, 74 A.3d 80,  
296 Ed. Law Rep. 1157 (App. Div. 2013).
- 5 Pure Wafer Incorporated v. Prescott, City of, 845 F.3d 943 (9th Cir. 2017); Trumbull Cty. Bd. of Commrs. v.  
Warren, 142 Ohio App. 3d 599, 756 N.E.2d 690 (11th Dist. Trumbull County 2001); Pierce County v. State,  
159 Wash. 2d 16, 148 P.3d 1002 (2006) (municipal bonds).
- 6 Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992); King County v. Taxpayers  
of King County, 132 Wash. 2d 360, 938 P.2d 309 (1997).
- 7 Montauk Bus Co., Inc. v. Utica City School Dist., 30 F. Supp. 2d 313, 131 Ed. Law Rep. 974 (N.D. N.Y.  
1998) (school district); Tyrpak v. Daniels, 124 Wash. 2d 146, 874 P.2d 1374 (1994) (port district).
- 8 Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).
- 9 Zuehlke v. Independent School Dist. No. 316, 538 N.W.2d 721 (Minn. Ct. App. 1995).
- 10 Head v. University of Missouri, 86 U.S. 526, 22 L. Ed. 160, 1873 WL 16058 (1873).

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### b. Contracts Involving Government Entities

## § 763. Contracts between governmental entities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2680, 2689 to 2692, 2695 to 2699, 2726

Included within the Contracts Clause's guarantee against impairment of contracts are contracts by one state with another<sup>1</sup> and contracts between a state and the United States.<sup>2</sup>

No protected contractual obligation arises between a state and its subordinate governmental entities solely as a result of their relationship.<sup>3</sup> The state may constitutionally pass retrospective laws waiving or impairing its own rights or those of its subdivisions or imposing on itself or its subdivisions new liabilities with respect to transactions already passed as long as private rights are not infringed.<sup>4</sup>

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### Footnotes

- 1 [U.S. Trust Co. of New York v. New Jersey](#), 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); [Aveline v. Pennsylvania Bd. of Probation and Parole](#), 729 A.2d 1254 (Pa. Commw. Ct. 1999).
- 2 [McGee v. Mathis](#), 71 U.S. 143, 18 L. Ed. 314, 1866 WL 9463 (1866).
- 3 [Gomillion v. Lightfoot](#), 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960).
- 4 [Louisiana Public Facilities Authority v. Foster](#), 795 So. 2d 288 (La. 2001).

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## 16B Am. Jur. 2d Constitutional Law § 764

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### b. Contracts Involving Government Entities

## § 764. Statutes as creating protected contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2681

Statutes may create contractual obligations between the government and private parties that are protected by the Contracts Clause from impairment by state action.<sup>1</sup> A statute may be treated as a contract for purpose of the Contracts Clause when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the state.<sup>2</sup> In order for a legislative enactment to be deemed a contract for the purposes of the Contracts Clause, there must be a clear,<sup>3</sup> clear and unmistakable,<sup>4</sup> or clear and unequivocal<sup>5</sup> indication that the legislature intends to bind itself in a contractual manner; mere implication is not enough.<sup>6</sup> Absent an adequate expression of actual intent to create a contract, a statute which is undoubtedly a scheme of public regulation will not lightly be construed to be, in addition, a private contract to which the state is a party.<sup>7</sup>

There is no presumption or inference that a public contract was made by state legislation.<sup>8</sup> Rather, it is presumed that the legislature did not intend to bind itself contractually,<sup>9</sup> and a statute is presumed not to create private contractual<sup>10</sup> or vested rights,<sup>11</sup> or to confer rights contractual in nature.<sup>12</sup>

Legislative intent for a statute to give rise to contractual obligations may be found where the language of the statute itself uses contractual terminology,<sup>13</sup> expressly authorizes a contract,<sup>14</sup> or states that benefits are contractual.<sup>15</sup> When a legislature in a statute uses contractual language that induces public reliance, it can create an enforceable contract.<sup>16</sup> Statutory language may

evince an intent to create private contractual or vested rights if it expressly bars future amendments that would reduce benefits already granted.<sup>17</sup> A state contract, however, is generally not inferable from statutory provisions that contain no limitations on their future repeal or amendment.<sup>18</sup>

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Footnotes

- 1 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018).
- 2 LL Liquor, Inc. v. Montana, 912 F.3d 533 (9th Cir. 2018); Puckett v. Lexington-Fayette Urban County Government, 60 F. Supp. 3d 772 (E.D. Ky. 2014), aff'd, 833 F.3d 590 (6th Cir. 2016); Meriwether Minnesota Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. Ct. App. 2012).
- 3 Puckett v. Lexington-Fayette Urban County Government, 833 F.3d 590 (6th Cir. 2016); Meriwether Minnesota Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. Ct. App. 2012); American Federation of Teachers v. State, 167 N.H. 294, 111 A.3d 63 (2015).
- 4 State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S. Ct. 443, 82 L. Ed. 685, 113 A.L.R. 1482 (1938); San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009).
- 5 Cranston Firefighters, IAFF Local 1363, AFL-CIO v. Raimondo, 880 F.3d 44 (1st Cir. 2018).
- 6 Strunk v. Public Employees Retirement Bd., 338 Or. 145, 108 P.3d 1058 (2005).
- 7 National R.R. Passenger Corp. v. Atchison Topeka and Santa Fe Ry. Co., 470 U.S. 451, 105 S. Ct. 1441, 84 L. Ed. 2d 432 (1985).
- 8 U.S. v. Winstar Corp., 518 U.S. 839, 116 S. Ct. 2432, 135 L. Ed. 2d 964 (1996).
- 9 Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).
- 10 Puckett v. Lexington-Fayette Urban County Government, 833 F.3d 590 (6th Cir. 2016); Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018); Meriwether Minnesota Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. Ct. App. 2012); American Federation of Teachers v. State, 167 N.H. 294, 111 A.3d 63 (2015); Empire Gen Holdings, Inc. v. Governor of State, 40 Misc. 3d 984, 967 N.Y.S.2d 919 (Sup 2013).
- 11 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018); Meriwether Minnesota Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. Ct. App. 2012); American Federation of Teachers v. State, 167 N.H. 294, 111 A.3d 63 (2015); Empire Gen Holdings, Inc. v. Governor of State, 40 Misc. 3d 984, 967 N.Y.S.2d 919 (Sup 2013).
- 12 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Anonymous Taxpayer v. South Carolina Dept. of Revenue, 377 S.C. 425, 661 S.E.2d 73 (2008).
- 13 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018); Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).
- 14 Puckett v. Lexington-Fayette Urban County Government, 60 F. Supp. 3d 772 (E.D. Ky. 2014), aff'd, 833 F.3d 590 (6th Cir. 2016).
- 15 Puckett v. Lexington-Fayette Urban County Government, 60 F. Supp. 3d 772 (E.D. Ky. 2014), aff'd, 833 F.3d 590 (6th Cir. 2016).
- 16 Elliott v. Board of School Trustees of Madison Consolidated Schools, 876 F.3d 926, 349 Ed. Law Rep. 913 (7th Cir. 2017), cert. denied, 138 S. Ct. 2624, 201 L. Ed. 2d 1028 (2018).
- 17 Parella v. Retirement Bd. of Rhode Island Employees' Retirement System, 173 F.3d 46 (1st Cir. 1999); Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 954 F. Supp. 2d 38 (D. Me. 2013), aff'd, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); Puckett v. Lexington-Fayette Urban County Government, 60 F. Supp. 3d 772 (E.D. Ky. 2014), aff'd, 833 F.3d 590 (6th Cir. 2016).
- 18 Weyerhaeuser Co. v. Ellison, 208 Or. App. 612, 145 P.3d 309 (2006).

## 16B Am. Jur. 2d Constitutional Law § 765

American Jurisprudence, Second Edition | May 2021 Update

### Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 1. Contracts

###### b. Contracts Involving Government Entities

## § 765. Statutes as creating protected contract—Grants and privileges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2681, 2706 to 2708, 2710 to 2714

A legislative grant under which rights have vested amounts to a contract, and a subsequent statute attempting to impair or annul such grant, is unconstitutional because it is a law impairing the obligation of contracts in violation of the Contracts Clause.<sup>1</sup> Thus, if a state makes a grant absolute in terms and without any reservation of a right to alter, modify, or repeal it, this constitutes an executed contract, and the state is forbidden to pass laws impairing the obligation arising therefrom.<sup>2</sup> The same rule is fully applicable to grants embodied in municipal enactments.<sup>3</sup> No obligation of contract is impaired by alteration of a conditioned grant.<sup>4</sup>

On the other hand, it is also the rule that the legislature has the power to take away by statute that which has been given by statute except when to do so would obviously amount to the impairment of a vested right.<sup>5</sup> The recall of such a privilege is not an impairment of the obligation of contracts.<sup>6</sup> So, until a general power granted to corporations has been exercised, the terms and conditions under which it may be exercised are subject to legislative control.<sup>7</sup> Provisions granting such a right or power to a corporation do not partake of the nature of a contract,<sup>8</sup> and the revocation of such a privilege at any time before it is acted upon does not amount to impairment in a constitutional sense.<sup>9</sup> However, once acted upon, a corporate charter is a contract entitled to constitutional protection,<sup>10</sup> and it may not be amended or repealed without the consent of the corporation or its members unless such right was reserved by the legislature.<sup>11</sup>

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Footnotes

- 1        [Appleby v. City of New York](#), 271 U.S. 364, 46 S. Ct. 569, 70 L. Ed. 992 (1926); [Anderson-Tully Co. v. Murphree](#), 153 F.2d 874 (C.C.A. 8th Cir. 1946); [Pinkham v. Unborn Children of Jather Pinkham](#), 227 N.C. 72, 40 S.E.2d 690 (1946).
- 2        [Ogelsby v. Adams](#), 268 N.C. 272, 150 S.E.2d 383 (1966).
- 3        [New York Electric Lines Co. v. Empire City Subway Co.](#), 235 U.S. 179, 35 S. Ct. 72, 59 L. Ed. 184 (1914); [Russell v. Sebastian](#), 233 U.S. 195, 34 S. Ct. 517, 58 L. Ed. 912 (1914).
- 4        [Dunn v. City of New York](#), 7 N.Y.2d 232, 196 N.Y.S.2d 686, 164 N.E.2d 709, 78 A.L.R.2d 1191 (1959).
- 5        [Crenshaw v. U.S.](#), 134 U.S. 99, 10 S. Ct. 431, 33 L. Ed. 825 (1890).
- 6        [Crenshaw v. U.S.](#), 134 U.S. 99, 10 S. Ct. 431, 33 L. Ed. 825 (1890).
- 7        [East Tennessee, V. & G. Ry. Co. v. Frazier](#), 139 U.S. 288, 11 S. Ct. 517, 35 L. Ed. 196 (1891).
- 8        [Bank of Commerce v. State of Tennessee](#), 163 U.S. 416, 16 S. Ct. 1113, 41 L. Ed. 211 (1896).
- 9        [Capital City Light & Fuel Co. v. City of Tallahassee](#), 186 U.S. 401, 22 S. Ct. 866, 46 L. Ed. 1219 (1902).
- 10      Am. Jur. 2d, Corporations § 75.
- 11      [Hopkins v. The Vizcayans](#), 582 So. 2d 689 (Fla. 3d DCA 1991) (a nonprofit corporation did not have a vested contract right to amend its articles of incorporation as permitted under a statute in effect at the time of its incorporation, which right could not be impaired constitutionally by a later statute providing for a different method; the statute under which the nonprofit corporation was formed reserved to the legislature the power to prescribe new regulations, provisions, and limitations as the legislature would deem appropriate and to amend or repeal or modify the statute at its pleasure).  
As to reservation of the power to amend or repeal corporate charters, see [Am. Jur. 2d, Corporations §§ 79 to 89](#).

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## 16B Am. Jur. 2d Constitutional Law § 766

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 2. Obligations

## § 766. Definition and nature of protected obligation of contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2668

For purposes of the constitutional protection against the impairment of the obligation of contracts, provided by the Contracts Clause, the "obligation" of a contract is defined as the law or duty that binds the parties to perform their agreement.<sup>1</sup> It consists in that which a person has undertaken to perform,<sup>2</sup> and it is a legal, not a mere moral, obligation.<sup>3</sup> A contract's obligations thus are its legally enforceable rights and duties.<sup>4</sup>

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### Footnotes

- 1 [Home Bldg. & Loan Ass'n v. Blaisdell](#), 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934); [Henderson v. Love](#), 181 S.W.3d 810 (Tex. App. Texarkana 2005).
- 2 [State v. Citrus County](#), 116 Fla. 676, 157 So. 4, 97 A.L.R. 431 (1934).
- 3 [King v. Duval County](#), 128 Fla. 388, 174 So. 817 (1937); [Baccus v. Banks](#), 1947 OK 322, 199 Okla. 647, 192 P.2d 683 (1947).
- 4 [Colon de Mejias v. Malloy](#), 353 F. Supp. 3d 162 (D. Conn. 2018).

## 16B Am. Jur. 2d Constitutional Law § 767

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### Constitutional Law

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 2. Obligations

## § 767. Effect of existing laws as to obligation of contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2668

In conformity with the well-established rule that the laws that subsist at the time and place of making a contract enter into and form a part of it as if they were expressly referred to or incorporated in its terms,<sup>1</sup> the obligation of a contract is measured by the standard of the laws in force at the time it was entered into, and its performance is to be regulated by the terms and rules that they prescribe.<sup>2</sup> The obligation of a contract thus depends on the law in effect when that contract was made.<sup>3</sup> The law that establishes the obligation of a contract is not general or universal law but the law of the jurisdiction in reference to which the contract is made.<sup>4</sup>

Laws that are in force at the time that parties enter into a contract are merged with other obligations that are specifically set forth in the agreement and legally do not impair the contract under the Contracts Clause.<sup>5</sup> The obligations protected by the Contracts Clause thus include not only the express terms of a contract but also the contemporaneous state law pertaining to interpretation and enforcement.<sup>6</sup> Accordingly, state laws incorporated into private contracts may create implied contractual obligations that, while not expressly stated in a contract, may nonetheless provide a basis for a Contracts Clause claim.<sup>7</sup>

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Footnotes

- 1           Wood v. Lovett, 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941); Waldon v. Holland, 206 Ark. 401,  
175 S.W.2d 570 (1943).
- 2           W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295  
U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935); Teachers' Retirement Bd. v. Genest, 154 Cal.  
App. 4th 1012, 65 Cal. Rptr. 3d 326, 223 Ed. Law Rep. 342 (3d Dist. 2007).
- 3           Vaughn v. Public Employees' Retirement System of Mississippi, 182 So. 3d 433 (Miss. 2015).
- 4           Selover, Bates & Co. v. Walsh, 226 U.S. 112, 33 S. Ct. 69, 57 L. Ed. 146 (1912); Boston Ice Co. v. Boston  
& M. R. R., 77 N.H. 6, 86 A. 356 (1913).
- 5           Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 546 Pa. 315, 684 A.2d 1047  
(1996).
- 6           Legal Asset Funding, LLC v. Travelers Cas. & Sur. Co., 155 F. Supp. 2d 90 (D.N.J. 2001).
- 7           Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018).

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## 16B Am. Jur. 2d Constitutional Law § 768

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### XI. Obligation of Contracts

#### C. Contractual Obligations Protected

##### 2. Obligations

## § 768. Enforcement rights and remedies as part of obligation of contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2660, 2668, 2740

Nothing is more material to the obligation of a contract than the means of its enforcement,<sup>1</sup> and a remedy is a part of the obligation guaranteed by the Contracts Clause against impairment.<sup>2</sup> For an existing or specific remedy to be an obligation of a contract, however, it must have been contracted for and agreed to by the parties in the contract itself.<sup>3</sup>

### Observation:

Changes in the laws that make a contract legally enforceable may trigger Contracts Clause scrutiny if they impair the obligation of preexisting contracts, even if they do not alter any of the contracts' bargained-for terms.<sup>4</sup>

Footnotes

- 1 Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934);  
Adams v. Spillyards, 187 Ark. 641, 61 S.W.2d 686, 86 A.L.R. 1493 (1933).
- 2 Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934);  
Adams v. Spillyards, 187 Ark. 641, 61 S.W.2d 686, 86 A.L.R. 1493 (1933).
- 3 Price Pfister, Inc. v. Moore & Kimmey, Inc., 48 S.W.3d 341 (Tex. App. Houston 14th Dist. 2001).
- 4 General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).

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## 16B Am. Jur. 2d Constitutional Law XI D Refs.

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736, 2740

### A.L.R. Library

A.L.R. Index, Impairment of Contracts

West's A.L.R. Digest, [Constitutional Law](#)  2671, 2687, 2736, 2740

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## 16B Am. Jur. 2d Constitutional Law § 769

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 1. In General

## § 769. Impairment of obligation of contract, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736

The term "impair," for purposes of the Contracts Clause's prohibition of legislation impairing the obligation of contracts, is given its ordinary meaning, which, according to the most basic dictionary definition, is to make worse.<sup>1</sup> It is also defined as meaning to diminish in quantity, value, excellency, or strength; to lessen in power; or to weaken.<sup>2</sup> Accordingly, an obligation of a contract is impaired for purposes of the Contracts Clause when it is made worse or is diminished in quantity, value, excellence, or strength.<sup>3</sup>

A law impairs the obligation of a contract in violation of the Contracts Clause when it deprives a party of the benefits of the contract<sup>4</sup> or when it takes from the party that party's whole contract and all the rights that it was intended to confer.<sup>5</sup> A law also impairs the obligations of a contract when it renders those obligations invalid or releases or extinguishes them.<sup>6</sup> Likewise, a law that has the effect of rewriting an antecedent contract in a manner that changes the substantive rights of the parties to the existing contract,<sup>7</sup> or changes the intention and legal effect of the parties, giving to one a greater or the other a less interest or benefit in the contract,<sup>8</sup> impairs its obligation in violation of the Contracts Clause. A contract also is impaired by legislation that alters its terms, imposes new conditions, or lessens its value.<sup>9</sup>

No contractual obligation is impaired when state action implicates the subject matter of a contract, but does not alter any of the duties that the parties to the contract are legally required to perform.<sup>10</sup>

**Observation:**

No attempt is made in the Federal or State Constitutions to enumerate the modes by which contracts may be impaired.<sup>11</sup>

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Footnotes

- 1 Caruso v. City of Omaha, 222 Neb. 257, 383 N.W.2d 41 (1986).
- 2 Sears, Roebuck & Co. v. Forbes/cohen Florida Properties, L.P., 223 So. 3d 292 (Fla. 4th DCA 2017).
- 3 Lawnwood Medical Center, Inc. v. Seeger, 959 So. 2d 1222 (Fla. 1st DCA 2007), decision aff'd, 990 So. 2d 503 (Fla. 2008).
- 4 Northern Pac. Ry. Co. v. State of Minn., 208 U.S. 583, 28 S. Ct. 341, 52 L. Ed. 630 (1908); FL Receivables Trust 2002-A v. Arizona Mills, L.L.C., 230 Ariz. 160, 281 P.3d 1028, 77 U.C.C. Rep. Serv. 2d 874 (Ct. App. Div. 1 2012).
- 5 Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).
- 6 Fourth La Costa Condominium Owners Assn. v. Seith, 159 Cal. App. 4th 563, 71 Cal. Rptr. 3d 299 (4th Dist. 2008); Williams v. City of Kuttawa, 466 S.W.3d 505 (Ky. Ct. App. 2015); Jennissen v. City of Bloomington, 938 N.W.2d 808 (Minn. 2020).
- 7 Hawk v. PC Village Ass'n, Inc., 233 Ariz. 94, 309 P.3d 918 (Ct. App. Div. 1 2013); Snyder v. Florida Prepaid College Board, 269 So. 3d 586, 366 Ed. Law Rep. 1053 (Fla. 1st DCA 2019).
- 8 Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018).
- 9 In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).
- 10 Colon de Mejias v. Malloy, 353 F. Supp. 3d 162 (D. Conn. 2018).
- 11 Carondelet Canal & Navigation Co. v. State of Louisiana, 233 U.S. 362, 34 S. Ct. 627, 58 L. Ed. 1001 (1914).

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## 16B Am. Jur. 2d Constitutional Law § 770

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 1. In General

## § 770. Requirement that impairment of contractual obligation be substantial

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736

Laws impairing the obligation of contracts violate the Contracts Clause only if the impairment is substantial.<sup>1</sup> In determining whether the impairment of the obligation of contract is substantial for Contracts Clause purposes, a court considers the extent to which the law undermines the contractual bargain and prevents the party from safeguarding or reinstating one's rights.<sup>2</sup> A court also considers the extent to which the law interferes with a party's reasonable expectations<sup>3</sup> at the time of contracting, regarding the specific contractual rights the state's action allegedly impairs.<sup>4</sup> In order for a contractual impairment to be substantial, the total destruction of contractual expectations is not necessary.<sup>5</sup> When public contracts are involved, even minimal impairment of contractual expectations violates the Contracts Clause if there is no real exercise of police power to justify the impairment.<sup>6</sup> A finding of minimal alteration of contractual obligations, however, may end the court's inquiry as to the alleged violation of the Contracts Clause.<sup>7</sup>

An impairment to a contract is substantial in violation of the Contracts Clause if it disrupts actual and important reliance interests<sup>8</sup> or significantly alters the duties of a party.<sup>9</sup> Legislation causes a substantial impairment in violation of the Contracts Clause if it alters a central undertaking of the contract that substantially induced a party to enter the bargain.<sup>10</sup> A law that provides only one side of the bargaining table with the power to modify any term of a contract after it has been negotiated and executed is perhaps the epitome of a substantial impairment.<sup>11</sup> However, legislation readjusting rights and burdens does not violate the Contracts Clause solely because it upsets otherwise settled expectations, even though the effect of the legislation is

to impose a new duty or liability based on past acts.<sup>12</sup> A law that technically alters an obligation of a contract also does not substantially impair it if the alteration merely restricts a party to those gains reasonably to be expected from the contract.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

For those who do business in a heavily regulated industry, the expected costs of foreseeable future regulation are already presumed to be priced into the contracts formed under the prior regulation, for purposes of determining whether contractual impairment is substantial, as would violate Contracts Clause. [U.S. Const. art. 1, § 10, cl. 1. Auracle Homes, LLC v. Lamont](#), 478 F. Supp. 3d 199 (D. Conn. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Elliott v. Board of School Trustees of Madison Consolidated Schools](#), 876 F.3d 926, 349 Ed. Law Rep. 913 (7th Cir. 2017), cert. denied, 138 S. Ct. 2624, 201 L. Ed. 2d 1028 (2018); [Brown v. New York](#), 975 F. Supp. 2d 209 (N.D. N.Y. 2013).  
As to substantial impairment being part of the test for violation of the Contracts Clause, see § 750.
- 2 [Sveen v. Melin](#), 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018); [Alarm Detection Systems, Incorporated v. Village of Schaumburg](#), 930 F.3d 812 (7th Cir. 2019).
- 3 [Sveen v. Melin](#), 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018); [CFCU Community Credit Union v. Hayward](#), 552 F.3d 253 (2d Cir. 2009); [Alarm Detection Systems, Incorporated v. Village of Schaumburg](#), 930 F.3d 812 (7th Cir. 2019); [Hawkeye Commodity Promotions, Inc. v. Vilsack](#), 486 F.3d 430 (8th Cir. 2007); [21st Century Oncology, Inc. v. Moody](#), 402 F. Supp. 3d 1351 (N.D. Fla. 2019); [Hawk v. PC Village Ass'n, Inc.](#), 233 Ariz. 94, 309 P.3d 918 (Ct. App. Div. 1 2013).
- 4 [United Healthcare Ins. Co. v. Davis](#), 602 F.3d 618 (5th Cir. 2010).
- 5 [TF-Harbor, LLC v. City of Rockwall, Tex.](#), 18 F. Supp. 3d 810 (N.D. Tex. 2014), aff'd, 592 Fed. Appx. 323 (5th Cir. 2015); [Welch v. Brown](#), 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014); [Sears, Roebuck & Co. v. Forbes/cohen Florida Properties, L.P.](#), 223 So. 3d 292 (Fla. 4th DCA 2017); [Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund](#), 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); [United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ.](#), 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008); [In re Individual 35W Bridge Litigation](#), 787 N.W.2d 643 (Minn. Ct. App. 2010), aff'd, 806 N.W.2d 820 (Minn. 2011); [North Carolina Ass'n of Educators, Inc. v. State](#), 368 N.C. 777, 786 S.E.2d 255, 331 Ed. Law Rep. 485 (2016).
- 6 [Pierce County v. State](#), 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 7 [Allied Structural Steel Co. v. Spannaus](#), 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978); [Boyz Sanitation Service, Inc. v. City of Rawlins, Wyoming](#), 889 F.3d 1189 (10th Cir. 2018); [Katzman v. Los Angeles County Metropolitan Transportation Authority](#), 72 F. Supp. 3d 1091 (N.D. Cal. 2014); [State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State](#), 937 So. 2d 313 (La. 2006).
- 8 [Elliott v. Board of School Trustees of Madison Consolidated Schools](#), 876 F.3d 926, 349 Ed. Law Rep. 913 (7th Cir. 2017), cert. denied, 138 S. Ct. 2624, 201 L. Ed. 2d 1028 (2018).
- 9 [Brown v. New York](#), 975 F. Supp. 2d 209 (N.D. N.Y. 2013).
- 10 [Elliott v. Board of School Trustees of Madison Consolidated Schools](#), 876 F.3d 926, 349 Ed. Law Rep. 913 (7th Cir. 2017), cert. denied, 138 S. Ct. 2624, 201 L. Ed. 2d 1028 (2018).

- 11           New York State Correctional Officers & Police Benev. Ass'n, Inc. v. New York, 911 F. Supp. 2d 111 (N.D.  
N.Y. 2012).
- 12           Carbon Fuel Co. v. USX Corp., 100 F.3d 1124 (4th Cir. 1996).
- 13           City of El Paso v. Simmons, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965); United Healthcare Ins.  
Co. v. Davis, 602 F.3d 618 (5th Cir. 2010); Lyon v. Flournoy, 271 Cal. App. 2d 774, 76 Cal. Rptr. 869 (3d  
Dist. 1969).

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## 16B Am. Jur. 2d Constitutional Law § 771

American Jurisprudence, Second Edition | May 2021 Update

### Constitutional Law

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 1. In General

## § 771. Degree or extent of prior state regulation on impairment of contractual obligation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736

In determining whether a state law operates as an impairment of the obligation of contract, in violation of the Contracts Clause, a court must consider whether the parties to the contract were operating in a regulated industry,<sup>1</sup> and if so, the extent to which the industry subject to the contract has been regulated in the past.<sup>2</sup> Parties who contract with respect to a regulated industry enter those contracts subject to further, reasonable regulation, and as such, are presumed to contract with the knowledge that, regardless of the terms they agree to, subsequent reasonable regulation might require them to amend one or more of those terms.<sup>3</sup> In other words, when a party enters an industry that is regulated in a particular manner, it is entering subject to further legislation in the area, and changes in the regulation that may affect its contractual relationships are foreseeable for Contracts Clause purposes.<sup>4</sup> Generally, the more heavily regulated the industry, the less reasonable it is to expect that contractual relationships will not be altered by legislation, for Contracts Clause purposes.<sup>5</sup> Accordingly, where an industry has been heavily regulated, regulatory changes that abrogate an industry player's contract rights are less likely to be considered substantial impairments in violation of the Contracts Clause.<sup>6</sup> In such cases, the complainant may be required to demonstrate that the challenged legislation gives rise to an impairment of overriding severity.<sup>7</sup>

Prior regulation of an industry as a whole does not necessarily preclude every claim that subsequent legislation unconstitutionally impairs preexisting contractual obligations.<sup>8</sup> A court must look to the nature as well as the act of regulation to determine whether an industry has been sufficiently regulated in the past to preempt a Contracts Clause challenge.<sup>9</sup> The prior regulation must share

more in common with the challenged legislation than merely the industry in which it operates in order to bar a subsequent finding of substantial impairment under the Contracts Clause.<sup>10</sup>

New legislation may constitute a violation of the Contracts Clause when applied to industries never before or only lightly regulated, especially if such legislation cannot be justified as necessary for the public interest.<sup>11</sup>

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Footnotes

- 1 American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012); HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010); State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).
- 2 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); Mussetter Distributing, Inc. v. DBI Beverage Inc., 685 F. Supp. 2d 1028 (N.D. Cal. 2010); Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008).
- 3 All Star, Inc. v. Georgia Atlanta Amusements, LLC, 332 Ga. App. 1, 770 S.E.2d 22 (2015).
- 4 American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012).
- 5 Koster v. City of Davenport, Iowa, 183 F.3d 762 (8th Cir. 1999).
- 6 S&M Brands, Inc. v. Georgia ex rel. Carr, 925 F.3d 1198 (11th Cir. 2019).
- The impairment of existing contracts is not unconstitutional when the parties were on notice that the field in which they were contracting was subject to close regulation. *Hicks v. Wilson*, 182 W. Va. 660, 391 S.E.2d 350 (1990).
- 7 *Serrano v. Aetna Ins. Co.*, 233 Conn. 437, 664 A.2d 279 (1995).
- 8 *In re Workers' Compensation Refund*, 46 F.3d 813 (8th Cir. 1995); *Caritas Services, Inc. v. Department of Social and Health Services*, 123 Wash. 2d 391, 869 P.2d 28 (1994).
- 9 *Ross v. City of Berkeley*, 655 F. Supp. 820 (N.D. Cal. 1987).
- 10 *Ross v. City of Berkeley*, 655 F. Supp. 820 (N.D. Cal. 1987).
- 11 *Rolec, Inc. v. Finlay Hydrascreen USA, Inc.*, 917 F. Supp. 67 (D. Me. 1996).

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## 16B Am. Jur. 2d Constitutional Law § 772

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 2. Impairment of Remedy or Means of Enforcement

## § 772. Impairment of contract remedy or enforcement, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736, 2740

It is not always unconstitutional for changes in statutory remedies to affect preexisting contracts.<sup>1</sup> The Contracts Clause, prohibiting laws that impair the obligation of contracts, does not preclude the legislature from passing laws that impose new procedures on the enforcement of substantive rights under a contract,<sup>2</sup> and it is to be assumed that the parties make their contracts with reference to this power of the state.<sup>3</sup> On the other hand, when a law is so changed that the means of enforcing the duty imposed by a contract are materially impaired, the obligation of the contract no longer remains the same, and the Contracts Clause is violated.<sup>4</sup> Legislation that tends to postpone or retard enforcement of a contract is an impairment of a contractual obligation under the Contracts Clause.<sup>5</sup>

For purposes of the Contracts Clause, the legislature may not so circumscribe an existing remedy with conditions and restrictions as seriously to impair the value of the right.<sup>6</sup> No changes in remedies that materially lessen the value of an agreement or that abridge, obstruct, or unreasonably delay rights thereunder will be permitted.<sup>7</sup> If a law deprives the holder of the contract of all adequate and efficacious remedy, the obligation of the contract is impaired for the purposes of the Contracts Clause.<sup>8</sup> For example, while a state is free to regulate the procedure in its courts even with reference to contracts already made and moderate extensions of the time for pleading or for trial will ordinarily fall within the power so reserved, a different situation is presented when extensions are so piled up as to make the remedy a shadow, and a statute attempting so to regulate extensions is void as impairing the obligation of contract.<sup>9</sup>

Generally speaking, laws that add to a means of enforcing existing obligations are held not violative of the Contracts Clause.<sup>10</sup>

**Observation:**

A reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement.<sup>11</sup>

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Footnotes

- 1 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).
- 2 Lynn v. Prudential Property and Cas. Ins. Co., 422 Pa. Super. 479, 619 A.2d 779 (1993).
- 3 Henley v. Myers, 215 U.S. 373, 30 S. Ct. 148, 54 L. Ed. 240 (1910).
- 4 Hendrickson v. Apperson, 245 U.S. 105, 38 S. Ct. 44, 62 L. Ed. 178 (1917); Matter of Pettit, 55 B.R. 394 (Bankr. S.D. Iowa 1985), order aff'd, 57 B.R. 362 (S.D. Iowa 1985); State ex rel. Buckwalter v. City of Lakeland, 112 Fla. 200, 150 So. 508, 90 A.L.R. 704 (1933).
- 5 Citrus County Hosp. Bd. v. Citrus Memorial Health Foundation, Inc., 150 So. 3d 1102 (Fla. 2014).
- 6 Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 89 S. Ct. 518, 21 L. Ed. 2d 474 (1969); Honeyman v. Jacobs, 306 U.S. 539, 59 S. Ct. 702, 83 L. Ed. 972 (1939); Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co., 300 U.S. 124, 57 S. Ct. 338, 81 L. Ed. 552, 108 A.L.R. 886 (1937).
- 7 In re Garrison, 108 B.R. 760 (Bankr. N.D. Okla. 1989) (the legislature's modification of contractual enforcement remedies by its amendment of an exemption is an unconstitutional impairment of preexisting contracts where the modification substantially enlarges the scope of the exemption and thereby substantially reduces the enforcement value of the contract and does so unreasonably).
- 8 Waste Management Holdings, Inc. v. Gilmore, 64 F. Supp. 2d 537 (E.D. Va. 1999).
- 9 W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).
- 10 Canton Textile Mills, Inc. v. Lathem, 253 Ga. 102, 317 S.E.2d 189 (1984).
- 11 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

## 16B Am. Jur. 2d Constitutional Law § 773

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 2. Impairment of Remedy or Means of Enforcement

## § 773. Abrogation and substitution of remedies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736, 2740

While the legislature may not withdraw all remedies or the only existing remedy and, thus, in effect, destroy a contract,<sup>1</sup> the modes of procedure in the courts of a state are so far within the legislative control that a particular remedy existing at the time of the making of a contract may be abrogated altogether without impairing the obligation of contract if another and equally adequate remedy for the enforcement of that obligation remains or is substituted for the one taken away.<sup>2</sup> The abrogation or substitution of remedies may be accomplished even though the new or the remaining remedy is less convenient than that which was abolished or less prompt and speedy.<sup>3</sup>

A legislative act declaring certain existing rights unenforceable after a fixed date in the future is not unconstitutional as impairing the obligation of a contract, if the date so fixed provides a reasonable time for the institution of proceedings for the vindication of such rights.<sup>4</sup> Likewise, a statute temporarily denying a remedy and operative only for a reasonable time does not impair the obligation of contracts, especially where enacted to combat existing evils and to prevent worse or more extensive evils.<sup>5</sup>

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### Footnotes

<sup>1</sup> *Thorpe v. Housing Authority of City of Durham*, 393 U.S. 268, 89 S. Ct. 518, 21 L. Ed. 2d 474 (1969); *Honeyman v. Jacobs*, 306 U.S. 539, 59 S. Ct. 702, 83 L. Ed. 972 (1939); *Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co.*, 300 U.S. 124, 57 S. Ct. 338, 81 L. Ed. 552, 108 A.L.R.

886 (1937); W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935); Coombes v. Getz, 285 U.S. 434, 52 S. Ct. 435, 76 L. Ed. 866 (1932).

2 Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Co., 300 U.S. 124, 57 S. Ct. 338, 81  
L. Ed. 552, 108 A.L.R. 886 (1937); Ingraham v. Hanson, 297 U.S. 378, 56 S. Ct. 511, 80 L. Ed. 728 (1936).

3 W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295  
U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

4 Greer v. Workmen's Compensation Commissioner, 123 W. Va. 270, 15 S.E.2d 175 (1941).

5 Honeyman v. Hanan, 275 N.Y. 382, 9 N.E.2d 970 (1937).

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## 16B Am. Jur. 2d Constitutional Law § 774

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 2. Impairment of Remedy or Means of Enforcement

## § 774. Curative statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736, 2740

It is a general rule that the legislature has power, in the absence of any inhibiting constitutional limitation, to pass a curative statute to correct errors or informalities in deeds, mortgages, and other instruments defectively executed or acknowledged where the rights of third parties which have been acquired in good faith are saved,<sup>1</sup> or to correct defects in statutes,<sup>2</sup> and no impairment of the obligation of contracts is necessarily effected by such curative laws.<sup>3</sup>

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### Footnotes

1 [McFaddin v. Evans-Snider-Buel Co.](#), 185 U.S. 505, 22 S. Ct. 758, 46 L. Ed. 1012 (1902).

2 [Mason v. U.S.A. Medical Center](#), 646 So. 2d 90 (Ala. Civ. App. 1994) (retroactive application of a garnishment statute governing the method by which a garnishee was to pay garnished funds into the court as they were deducted or withheld did not violate the constitutional prohibition against impairing the obligation of contracts, since the amendment simply corrected a possible defect in the original statute); [Canton Textile Mills, Inc. v. Lathem](#), 253 Ga. 102, 317 S.E.2d 189 (1984).

3 [Wichelman v. Messner](#), 250 Minn. 88, 83 N.W.2d 800, 71 A.L.R.2d 816 (1957).

## 16B Am. Jur. 2d Constitutional Law § 775

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 2. Impairment of Remedy or Means of Enforcement

## § 775. Legislation mandating breach of public contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736

Legislation that mandates that the state breach one of its contractual obligations yet does not change or eliminate the obligation itself does not contravene the Contracts Clause.<sup>1</sup> The state, like any private party, must be able to breach contracts without turning every breach into a violation of the Contracts Clause.<sup>2</sup> The distinction between a breach of contract and an impairment of contract depends on the availability of a remedy in damages.<sup>3</sup> If a contract is merely breached and the duty to pay damages remains, then the obligation of the contract remains and there has been no impairment.<sup>4</sup> Thus, if a state breaches a contract but does not impair the counterparty's right to recover damages for breach, the state has not impaired the obligation of contract, in violation of the Contracts Clause.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Strunk v. Public Employees Retirement Bd.](#), 338 Or. 145, 108 P.3d 1058 (2005).

<sup>2</sup> [TM Park Ave. Associates v. Pataki](#), 214 F.3d 344, 145 Ed. Law Rep. 147 (2d Cir. 2000).

<sup>3</sup> [TM Park Ave. Associates v. Pataki](#), 214 F.3d 344, 145 Ed. Law Rep. 147 (2d Cir. 2000); [Taylor v. City of Gadsden](#), 767 F.3d 1124 (11th Cir. 2014).

<sup>4</sup> [TM Park Ave. Associates v. Pataki](#), 214 F.3d 344, 145 Ed. Law Rep. 147 (2d Cir. 2000).

<sup>5</sup> [Redondo Const. Corp. v. Izquierdo](#), 662 F.3d 42 (1st Cir. 2011).

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## 16B Am. Jur. 2d Constitutional Law § 776

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### XI. Obligation of Contracts

#### D. Impairment of Obligation

##### 2. Impairment of Remedy or Means of Enforcement

## § 776. Stipulated remedies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2671, 2687, 2736, 2740

Frequently, parties, in executing a contract, stipulate in the body of the contract what remedy is to be pursued in the event of a breach. In such cases, the remedy agreed upon becomes a part of the obligation of contract and any subsequent statute that affects the remedy impairs the obligation and is unconstitutional under the Contracts Clause.<sup>1</sup> The effect of such a specific reference to and incorporation of such remedies is to deny to the legislature some of the power it might otherwise have over the alteration and substitution of remedies; when a contract is made stipulating for a specific remedy, it cannot be modified by subsequent legislation requiring the parties to pursue a different remedy, even though in the stipulation as to the remedy the directions of the statute are disregarded.<sup>2</sup> Similarly, when a state enters into a contract with a private individual, it is competent for the parties to provide, as a substantive part of the contract, special remedies for the enforcement of their respective obligations, and in such a case neither party may, without the consent of the other, resort to any form of remedy other than those stipulated for.<sup>3</sup>

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### Footnotes

- <sup>1</sup> [May v. Mulligan](#), 36 F. Supp. 596 (W.D. Mich. 1939), judgment aff'd, 117 F.2d 259 (C.C.A. 6th Cir. 1940); [Atlantic Loan Co. v. Peterson](#), 181 Ga. 266, 182 S.E. 15 (1935); [Sharber v. Florence](#), 131 Tex. 341, 115 S.W.2d 604 (1938).
- <sup>2</sup> [Chapin v. Frank](#), 236 S.W. 1006 (Tex. Civ. App. San Antonio 1921), writ granted, (Mar. 1, 1922) and aff'd, 263 S.W. 255 (Tex. Comm'n App. 1924), on reh'g, 10 S.W.2d 704 (Tex. Comm'n App. 1928) and rev'd on other grounds, 10 S.W.2d 704 (Tex. Comm'n App. 1928).



## 16B Am. Jur. 2d Constitutional Law XI E Refs.

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### XI. Obligation of Contracts

#### E. Purpose of Legislation; Reasonableness and Necessity

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2672, 2688, 2689, 2737

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West's A.L.R. Digest, [Constitutional Law](#)  2672, 2688, 2689, 2737

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## 16B Am. Jur. 2d Constitutional Law § 777

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### XI. Obligation of Contracts

#### E. Purpose of Legislation; Reasonableness and Necessity

## § 777. Public purpose as justification for impairment of contractual obligation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2672, 2688, 2737

If a state law constitutes a substantial impairment of an obligation of contract, for purposes of the Contracts Clause, the state, in justification, must have a significant and legitimate public purpose behind the law.<sup>1</sup> The requirement of a significant and legitimate public purpose guarantees that the state is exercising its police power rather than providing a benefit to special interests.<sup>2</sup> Such requirement is primarily designed to prevent a state from embarking on a policy motivated by a simple desire to escape its financial obligations or to injure others through the repudiation of debts or the destruction of contracts or the denial of the means to enforce them.<sup>3</sup>

A significant and legitimate public purpose, as required for legislation that substantially impairs a contractual obligation, is one aimed at remedying a broad and general social or economic problem.<sup>4</sup> It need not be addressed to an emergency or temporary situation.<sup>5</sup> The purpose of the legislation cannot be simply the financial benefit of the sovereign or for the mere advantage of particular individuals.<sup>6</sup> The protection of the public treasury is generally not a significant and legitimate public purpose to support impairment of a contractual obligation.<sup>7</sup> Likewise, leveling the playing field between contracting parties is not in itself a significant and legitimate public purpose.<sup>8</sup> The elimination of unforeseen windfall profits, however, is a legitimate state interest to support impairment of a contractual obligation.<sup>9</sup>

The state's interests in justifying the substantial impairment of a contractual obligation are less compelling when the contracts of tribal sovereigns are at issue because state laws and policies do not extend to tribal lands unless authorized by Congress.<sup>10</sup>

**Practice Tip:**

The burden of proof is on the state to show that its law substantially impairing an obligation of contract has a significant legitimate public purpose.<sup>11</sup>

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**Footnotes**

- 1 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); Borman, LLC v. 18718 Borman, LLC, 777 F.3d 816 (6th Cir. 2015); Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011); Gillette Commercial Operations North America & Subsidiaries v. Dep't of Treasury, 312 Mich. App. 394, 878 N.W.2d 891 (2015); EmergencyCare, Inc. v. Millcreek Tp., 68 A.3d 1 (Pa. Commw. Ct. 2013).  
As to the requirement of a substantial impairment of an obligation of contract, generally, see § 750.  
As to the prohibition of the impairment of the obligation of contracts being accommodated to the inherent police power of the state to safeguard the vital interests of its people, see § 749.
- 2 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); Branch Banking and Trust Co. v. Eloy Business Park, LLC, 112 F. Supp. 3d 1129 (D. Nev. 2015).
- 3 State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).
- 4 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of Virgin Islands, 65 V.I. 468, 842 F.3d 201 (3d Cir. 2016); Powers v. U.S., 783 F.3d 570 (5th Cir. 2015); Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); EmergencyCare, Inc. v. Millcreek Tp., 68 A.3d 1 (Pa. Commw. Ct. 2013).
- 5 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of Virgin Islands, 65 V.I. 468, 842 F.3d 201 (3d Cir. 2016); Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).
- 6 Donohue v. Paterson, 715 F. Supp. 2d 306 (N.D. N.Y. 2010).
- 7 Campbell v. Boston Housing Authority, 443 Mass. 574, 823 N.E.2d 363 (2005).
- 8 Equipment Mfrs. Institute v. Janklow, 300 F.3d 842 (8th Cir. 2002).
- 9 Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).
- 10 Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).
- 11 Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307, 1998 FED App. 0257P (6th Cir. 1998); Association of Equipment Manufacturers v. Burgum, 932 F.3d 727 (8th Cir. 2019).

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## 16B Am. Jur. 2d Constitutional Law § 778

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### Constitutional Law

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### XI. Obligation of Contracts

#### E. Purpose of Legislation; Reasonableness and Necessity

### § 778. Reasonableness and necessity of legislation impairing contractual obligation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2672, 2688, 2737

The Contracts Clause limits otherwise legitimate exercises of state legislative authority, and the existence of an important public interest is not always sufficient to overcome that limitation.<sup>1</sup> Even if a state is able to identify a significant and legitimate public purpose behind legislation found to substantially impair a contractual obligation, the court must consider whether the impairment is reasonable and necessary to serve the public purpose.<sup>2</sup> In other words, the fact that a contract-impairing law has a legitimate public purpose does not mean there is no Contracts Clause violation; the impairment must also be one where the means chosen are reasonable and necessary to meet the stated public purpose.<sup>3</sup>

In determining whether legislation impairing a contractual obligation is reasonable and necessary to serve a public purpose, the court engages in an independent analysis of whether the legislative purpose could have been achieved by less drastic measures.<sup>4</sup> When a government enacts legislation affecting an impairment of existing contracts, it must use the least intrusive means to achieve its goals,<sup>5</sup> it is not free to impose a drastic impairment of private contractual relationships when an evident and more moderate course would serve its purposes equally well.<sup>6</sup> A substantial impairment to a contract is not necessary, and thus violates the Contracts Clause, if the state could achieve its goal through a less drastic modification or without modifying the contract at all.<sup>7</sup>

Unless the state itself is a contracting party, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.<sup>8</sup> The state does not have to prove its choice the best among the available alternatives; rather, the party challenging the legislation must prove that there is no rational relationship between the state's ends and its means; merely contending that there was a better way is not sufficient.<sup>9</sup>

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Footnotes

- 1 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); City of El Paso v. Simmons, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965).
- 2 § 750.
- 3 New York State Correctional Officers & Police Benev. Ass'n, Inc. v. New York, 911 F. Supp. 2d 111 (N.D. N.Y. 2012).
- 4 Johanson v. Department of Social and Health Services, State of Wash., 91 Wash. App. 737, 959 P.2d 1166 (Div. 2 1998).
- 5 Interstate Marina Development Co. v. County of Los Angeles, 155 Cal. App. 3d 435, 202 Cal. Rptr. 377 (2d Dist. 1984).
- 6 Interstate Marina Development Co. v. County of Los Angeles, 155 Cal. App. 3d 435, 202 Cal. Rptr. 377 (2d Dist. 1984).
- 7 Elliott v. Board of School Trustees of Madison Consolidated Schools, 876 F.3d 926, 349 Ed. Law Rep. 913 (7th Cir. 2017), cert. denied, 138 S. Ct. 2624, 201 L. Ed. 2d 1028 (2018).
- 8 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Association of Equipment Manufacturers v. Burgum, 932 F.3d 727 (8th Cir. 2019); Lazar v. Kroncke, 862 F.3d 1186 (9th Cir. 2017), cert. denied, 138 S. Ct. 2647, 201 L. Ed. 2d 1049 (2018); Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, 559 S.W.3d 354, 360 Ed. Law Rep. 485 (Ky. 2018); United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008).
- 9 As to deference when the state is a contracting party, see § 779.  
Sal Tinnerello & Sons, Inc. v. Town of Stonington, 141 F.3d 46 (2d Cir. 1998).

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## 16B Am. Jur. 2d Constitutional Law § 779

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### XI. Obligation of Contracts

#### E. Purpose of Legislation; Reasonableness and Necessity

### § 779. Reasonableness and necessity of legislation impairing contractual obligation—Impairment of public contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2672, 2688, 2689

When determining whether legislation that substantially impairs a contractual relationship is necessary and reasonable under the Contracts Clause, legislation impairing a state's own contracts face more stringent examination than legislation regulating contractual relationships between private parties.<sup>1</sup> When a public contract is involved, complete deference to a legislative assessment of reasonableness and necessity is not appropriate,<sup>2</sup> and less deference is required,<sup>3</sup> since the state's self-interest is at stake.<sup>4</sup> A state is not completely free to consider impairing the obligation of its own contracts on a par with other policy alternatives<sup>5</sup> and is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.<sup>6</sup>

In assessing the reasonableness of a constitutional amendment impairing a state's contractual obligation, a court evaluates whether the social concerns that prompted the changes were foreseeable when the state entered into the compact and whether the conditions have changed sufficiently since the state entered the contract.<sup>7</sup> The extent of the impairment is also a relevant factor in determining its reasonableness.<sup>8</sup>

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#### Footnotes

<sup>1</sup> [U.S. Trust Co. of New York v. New Jersey](#), 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

- 2 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of Virgin Islands, 65 V.I. 468, 842 F.3d 201 (3d Cir. 2016); North Carolina Ass'n of Educators, Inc. v. State, 241 N.C. App. 284, 776 S.E.2d 1, 321 Ed. Law Rep. 538 (2015), decision aff'd as modified on other grounds, 368 N.C. 777, 786 S.E.2d 255, 331 Ed. Law Rep. 485 (2016).
- 3 United Auto., Aerospace, Agr. Implement Workers of America Intern. Union v. Fortuño, 633 F.3d 37 (1st Cir. 2011).
- 4 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); United Auto., Aerospace, Agr. Implement Workers of America Intern. Union v. Fortuño, 633 F.3d 37 (1st Cir. 2011); Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); United Steel Paper and Forestry Rubber Manufacturing Allied Industrial and Service Workers International Union AFL-CIO-CLC v. Government of Virgin Islands, 65 V.I. 468, 842 F.3d 201 (3d Cir. 2016); North Carolina Ass'n of Educators, Inc. v. State, 241 N.C. App. 284, 776 S.E.2d 1, 321 Ed. Law Rep. 538 (2015), decision aff'd as modified on other grounds, 368 N.C. 777, 786 S.E.2d 255, 331 Ed. Law Rep. 485 (2016).
- 5 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).
- 6 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014).
- 7 Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).
- 8 U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

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## 16B Am. Jur. 2d Constitutional Law XI F Refs.

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### XI. Obligation of Contracts

#### F. Particular Issues and Applications of Contracts Clause

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2695 to 2699, 2704, 2722 to 2725(6)

### A.L.R. Library

A.L.R. Index, Impairment of Contracts

West's A.L.R. Digest, [Constitutional Law](#)  2695 to 2699, 2704, 2722 to 2725(6)

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## 16B Am. Jur. 2d Constitutional Law § 780

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### Constitutional Law

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### XI. Obligation of Contracts

#### F. Particular Issues and Applications of Contracts Clause

## § 780. Application of Contracts Clause to bonds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2704

States and other government entities have rarely been able to justify impairing contractual obligations entered into in financial markets, such as the public bond market.<sup>1</sup> When bonds are issued, there arises a contract between the purchaser and seller, the obligation of which cannot be impaired without violating the Contracts Clause.<sup>2</sup> The contract is substantially impaired when legislation detrimentally affects the financial framework that induced the bondholders to originally purchase the bonds, without providing alternative or additional security.<sup>3</sup> This is true even if the market for the bonds remains strong following the law's enactment.<sup>4</sup> The financial framework of a bond contract is detrimentally affected when a law put into effect after bonds were issued diminishes a tax source (that is, repeals a tax or reduces the tax base) that was pledged to support repayment of the bonds.<sup>5</sup> An unconstitutional impairment of contract thus may arise when a portion of a bondholder's security is removed.<sup>6</sup> However, as long as the bond-issuing entity is clearly able to repay its obligations within statutory and constitutional limitations, legislation reducing the entity's tax base does not impair the obligation of contracts in violation of the Contracts Clause.<sup>7</sup> Likewise, the bond issuer can transfer operational control over property that generates revenues to fund the bonds, so long as the property remains dedicated to purposes that fund the bonds.<sup>8</sup>

The government has no power to impair contracts by imposing statutory limitations on municipal bonds that override maturity and redemption provisions of outstanding bonds and indentures.<sup>9</sup> A mere change in the value or rating of outstanding general obligation bonds, however, is not, by itself, sufficient to prove impairment of contract.<sup>10</sup>

Footnotes

- 1      Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 2      Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).
- 3      Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 4      Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 5      Kurrus v. Priest, 342 Ark. 434, 29 S.W.3d 669 (2000); Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 6      City of Petaluma v. Cohen, 238 Cal. App. 4th 1430, 190 Cal. Rptr. 3d 703 (3d Dist. 2015).
- 7      Edgewood Independent School Dist. v. Meno, 917 S.W.2d 717, 108 Ed. Law Rep. 1310 (Tex. 1995), as modified without opinion, (Feb. 16, 1995).
- 8      Stilley v. Makris, 343 Ark. 673, 38 S.W.3d 889 (2001) (proposed initiative to sell county hospital would unconstitutionally impair contractual obligations expressed in the county's lease agreement that prohibited a sale to any party unwilling to assume all obligations of the county with respect to bonds secured by lease payments); Wayne County Bd. of Com'r's v. Wayne County Airport Authority, 253 Mich. App. 144, 658 N.W.2d 804 (2002); Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) (changes in composition of board of public bond issuer did not violate Contracts Clause where there was no evidence that changes would negatively affect value of outstanding bonds so as to substantially impair the bond contract).
- 9      Hutchinson, Shockley, Erley & Co. v. Evansville-Vanderburgh County Bldg. Authority, 644 N.E.2d 1228 (Ind. 1994).
- 10     Tyrpak v. Daniels, 124 Wash. 2d 146, 874 P.2d 1374 (1994).

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## 16B Am. Jur. 2d Constitutional Law § 781

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### XI. Obligation of Contracts

#### F. Particular Issues and Applications of Contracts Clause

### § 781. Application of Contracts Clause to public employment and pension contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2722 to 2725(6)

The terms and conditions of public employment, unlike those of private employment, generally are established by statute or other comparable enactment, such as charter provision or ordinance, rather than by contract,<sup>1</sup> and are not generally protected by the Contracts Clause from repeal or revision at the discretion of the legislative body.<sup>2</sup> Therefore, a government employer's unilateral modification of a discretionary personnel policy does not constitute the impairment of a contract in violation of the Contracts Clause.<sup>3</sup> The appointment to and tenure of an office created for public use and regulation of the salary affixed to such office also do not come within the import of the term "contracts" intended to be protected by the Contracts Clause.<sup>4</sup> However, when there is some clear indication that the legislature intends to bind itself contractually, a public contract concerning employment terms and benefits may arise out of statutory language and thus implicate the Contracts Clause.<sup>5</sup> Furthermore, with regard to at least certain terms or conditions of public employment that are created by statute, an employee who performs services while such a statutory provision is in effect obtains a right, protected by the Contracts Clause, to require the public employer to comply with the prescribed condition.<sup>6</sup>

State courts have generally viewed a public pension plan as creating implied-in-fact unilateral contracts,<sup>7</sup> and that pension rights are obligations protected by the Contracts Clause.<sup>8</sup> However, there is significant disagreement about when contractually enforceable rights accrue under such plans.<sup>9</sup> One widely held view is that at some point, public employees' contractual rights to pension benefits vest, and after vesting, the state is contractually bound to honor its obligation to provide a pension without any further modifications or decreases in overall benefit levels.<sup>10</sup> Several states have provisions in their constitutions declaring that vesting occurs at the moment of public employment and barring any legislative modifications that retroactively reduce

the accrued benefits of public employees.<sup>11</sup> Other states recognize that it is not the vested nature of the right to a pension upon retirement that is significant but rather a plan participant's substantial, detrimental reliance on the promise of a pension.<sup>12</sup> Several states follow a modified contract approach which permits some unilateral legislative modifications of pension plans as long as the legislature offsets any new disadvantage with comparable new advantages as seen from the point of view of the public employee.<sup>13</sup> Determinations regarding the intent of legislatures to be bound or the time at which obligations and rights become protected may depend on the particular statutory provisions challenged.<sup>14</sup> For this reason, some courts recognize a danger in adopting a theory of pension rights and analyzing whether a particular challenged statute created contract rights from that perspective, preferring to focus primarily on the statutory language.<sup>15</sup>

Any attempt to reduce or terminate benefits for government employees that are established by a statute or ordinance is prohibited by the Contracts Clause, but where the statute itself provides that it is subject to legislative change, it may be amended.<sup>16</sup>

As with other types of contracts, public employment contracts may be impaired if the law was reasonable and necessary and narrowly drawn.<sup>17</sup>

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#### Footnotes

- 1 White v. Davis, 30 Cal. 4th 528, 133 Cal. Rptr. 2d 648, 68 P.3d 74 (2003).
- 2 Cal Fire Local 2881 v. California Public Employees' Retirement System, 6 Cal. 5th 965, 244 Cal. Rptr. 3d 149, 435 P.3d 433 (Cal. 2019).
- 3 Collins v. City of Bridgeport, 206 W. Va. 467, 525 S.E.2d 658 (1999).
- 4 Dodge v. Board of Education of City of Chicago, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937); Phelps v. Board of Education of Town of West New York, 300 U.S. 319, 57 S. Ct. 483, 81 L. Ed. 674 (1937).
- 5 § 764.
- 6 White v. Davis, 30 Cal. 4th 528, 133 Cal. Rptr. 2d 648, 68 P.3d 74 (2003).
- 7 Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997).
- 8 Protect Our Benefits v. City and County of San Francisco, 235 Cal. App. 4th 619, 185 Cal. Rptr. 3d 410 (1st Dist. 2015).
- 9 McGrath v. Rhode Island Retirement Bd., 88 F.3d 12 (1st Cir. 1996).
- 10 Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997).
- 11 Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997) (citing constitutions).
- 12 Board of Trustees of Police Officers Pension and Relief Fund of City of Wheeling v. Carenbauer, 211 W. Va. 602, 567 S.E.2d 612 (2002).
- 13 Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997); Denning v. Kansas Public Employees Retirement System, 285 Kan. 1045, 180 P.3d 564 (2008).
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- 15 Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997).
- 16 Murray County School Dist. v. Adams, 218 Ga. App. 220, 461 S.E.2d 228, 103 Ed. Law Rep. 486 (1995); National Ass'n of Government Employees v. Com., 419 Mass. 448, 646 N.E.2d 106 (1995).
- 17 Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006) (wage freeze law impairing contracts between city and unions representing public school employees was essential to maintenance of the city's budget, was imposed only after other alternatives had been considered and tried, and was temporary and operated prospectively).

## 16B Am. Jur. 2d Constitutional Law § 782

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### Constitutional Law

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### XI. Obligation of Contracts

#### F. Particular Issues and Applications of Contracts Clause

## § 782. Emergency actions affecting government contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2695 to 2699

It has been held that in unusual emergency situations, such as where a governmental unit has declared itself bankrupt, the governmental unit's unilateral action to impair its contracts with its employees and other parties will be upheld if the declared emergency is based on an adequate factual foundation; the agency's action is designed to protect a basic social interest and not benefit a particular individual, the law giving rise to the impairment at issue is appropriate for the emergency and obligation, and the agency's decision is temporary and limited to the immediate exigency that caused the action.<sup>1</sup> Thus, a city's salary reduction plan instituted in response to a budgetary shortfall did not violate the Contracts Clause, even though the city substantially impaired an extant contract with its teachers and police by approving the plan.<sup>2</sup> The impairment was an exercise of the city's legitimate powers and was, thus, permissible, considering that the city clearly sought to tailor the plan as narrowly as possible and that the salary reductions were reasonable under the circumstances.<sup>3</sup> Moreover, the fact that a state insurance commissioner's rule to regulate insurance practices was determined to be a needed response to an emergency situation, was enacted to protect a societal interest in maintaining insurance without arbitrary deprivation, was precisely tailored to meet an existing emergency, imposed reasonable conditions upon insurers consistent with the statute, and was initially limited in duration until a new rule was adopted by normal administrative procedures foreclosed the insurers' contention that the rule unconstitutionally impaired contractual obligations in violation of the Contracts Clause.<sup>4</sup> On the other hand, a public employees salary deferral program, implemented under a state law under which affected executive branch employees received only a portion of their salaries for certain periods, was held to be an unconstitutional impairment of contract, notwithstanding the fiscal crisis the state was in and notwithstanding the fact that the burden was spread rather broadly, inasmuch as the program was not reasonable and necessary in that other alternatives existed.<sup>5</sup> In addition, a statute effecting a lag of payroll upon both represented and unrepresented

nonjudicial employees so as to offset the state's budget shortfall was invalid as a violation of the Contracts Clause, since the impairment of the contract was substantial and could not be justified as a legitimate means of alleviating the state's fiscal crisis.<sup>6</sup>

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Footnotes

- 1              [In re County of Orange](#), 179 B.R. 177 (Bankr. C.D. Cal. 1995).
- 2              [Baltimore Teachers Union, American Federation of Teachers Local 340, AFL-CIO v. Mayor and City Council of Baltimore](#), 6 F.3d 1012, 86 Ed. Law Rep. 92 (4th Cir. 1993).
- 3              [Baltimore Teachers Union, American Federation of Teachers Local 340, AFL-CIO v. Mayor and City Council of Baltimore](#), 6 F.3d 1012, 86 Ed. Law Rep. 92 (4th Cir. 1993).
- 4              [Matter of N.J.A.C. 11:1-20](#), 208 N.J. Super. 182, 505 A.2d 177, 57 A.L.R.4th 607 (App. Div. 1986).
- 5              [Condell v. Bress](#), 983 F.2d 415 (2d Cir. 1993).
- 6              [Association of Surrogates and Supreme Court Reporters Within City of New York by O'Leary v. State](#), 79 N.Y.2d 39, 580 N.Y.S.2d 153, 588 N.E.2d 51 (1992).

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